IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 2281 OF 2023
WITH
CRAN 8 OF 2026

SOURAV AGARWAL & ANR.
-VS-
STATE OF WEST BENGAL AND ANR.

For the Petitioners : Mr. Koushik Banerjee
Ms. Rashmita Sen

For the Opposite Party No.2 : Mr. Swapan Kr. Mallick
Mr. Amitabha Karmakar
Mr. Arup Bhowmick

Reserved on : 07.10.2026

Pronounced on : 15.10.2026

UDAY KUMAR, J.: –

1. The present revisional application under Section 482 of the Code of Criminal Procedure, 1973 (*Cr.P.C.*) has been preferred by the petitioners who are Directors of M/s. Frontline Corporation Ltd. seeking quashing of the criminal proceedings in Complaint Case No. CR-585 of 2021 under Sections 406 and 420 of the Indian Penal Code, 1860 (*IPC*), including the order of Cognizance and issuance of process against them being Order No. 01 dated December 22, 2021, presently pending before

the 2nd Court of the learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur.

2. The foundational facts necessary for the disposal of the instant revisional application, as revealed from the record, trace back to the year 2019 when M/s. Frontline Corporation Ltd. (a corporate entity having its head office at 5, Stephen House, B.B.D. Bagh, Kolkata) floated a commercial tender for establishing a petrol pump project on National Highway 41 at Dighasipur, Talpukur, Haldia. Opposite Party No. 2, operating as the sole proprietor of S.B. Construction, participated in the tender and was awarded the civil job-work contract. The scope of the agreement was essentially a service or labour contract based on negotiated rate quotations submitted by Opposite Party No. 2 on April 18, 2019, April 19, 2019, and September 16, 2019, for executing civil works covering an S.R. oil pump, pump-bed, boundary wall, storage tank, culvert, and access roads, while the supply of construction materials remained the exclusive responsibility of the company.

3. In the course of executing the contract, Opposite Party No. 2 raised periodic bills and received progressive payments from the petitioners' company from time to time. Following the damage caused to the boundary wall of the said petrol pump project by Cyclone Amphan, repair works were executed and separately paid for by the company. However, upon completion of the main pump-bed works, a commercial dispute arose between the parties regarding billing deductions and rate adjustments. To resolve the issue, mutual negotiations were held at the company's project office and subsequently at Bhabanipur Police Station

on July 29, 2021, culminating in an agreed settled sum of ₹7,87,000/- to be paid to the Opposite Party No. 2 toward the pump-bed bills. In terms of this settlement, M/s. Frontline Corporation Ltd. disbursed the entire abovementioned settled amount in three instalments between the months of July and September 2021, which Opposite Party No. 2 accepted without protest.

4. Nearly three months after receiving the final instalment under the said negotiated settlement, Opposite Party No. 2 raised a fresh claim asserting an unpaid balance of ₹39,30,525/- across eight other bills. When the company officials refused to clear the additional claim on December 10, 2021, on the ground that all accounts stood fully settled in view of their negotiated settlement dated July 29, 2021 and subsequent payments, Opposite Party No. 2 approached the 2nd Court of the learned Additional Chief Judicial Magistrate at Haldia, Purba Medinipur, on December 22, 2021, by filing a private written complaint under Section 200 Cr.P.C. against four individuals, including the present petitioners; alleging commission of offences punishable under Sections 384, 406, and 420 IPC. Significantly, the contracting corporate entity of the petitioners, M/s. Frontline Corporation Ltd., was not arrayed as an accused in the complaint.

5. By the impugned Order No. 01 dated December 22, 2021, the learned ACJM took cognizance of the alleged offences on a pre-typed cyclostyled order sheet by filling in blanks mechanically, examined the complainant on Solemn Affirmation under Section 200 Cr.P.C., and issued Summons under Section 204 Cr.P.C. against all accused persons for

offences under Sections 406 and 420 IPC. Crucial to note, the learned Magistrate issued process against the present petitioners directly on the very first day, immediately after filing of the complaint, without postponing process or conducting a mandatory inquiry or police investigation under Section 202(1) Cr.P.C., despite the petitioners permanently residing at Regent Park, Tollygunge, Kolkata situated strictly beyond the territorial jurisdiction of the ACJM Court, Haldia.

6. Aggrieved by the initiation and continuation of the criminal proceedings, the petitioners preferred the present revisional application before this Court, seeking quashing of Complaint Case No. CR-585 of 2021 and setting aside of the summoning order dated December 22, 2021, primarily on the grounds that the dispute is purely civil in nature, that charges under Sections 406 and 420 IPC are legally untenable and mutually exclusive on the same set of facts, that the learned ACJM, Haldia completely bypassed the mandatory inquiry required under Section 202(1) Cr.P.C., and that in the absence of arraignment of the corporate entity, the directors cannot be held vicariously liable.

7. On the basis of the rival pleadings and submissions advanced across the Bar, the following core questions arise for determination in this revisional application:

> ***Firstly,*** Whether the mere non-payment, part-payment, or disputed deduction of contractual bills raised for civil works executed under a commercial agreement—where substantial payments were periodically made and accepted—can make a

party criminally liable for the offence of Cheating punishable under Section 420 of the Indian Penal Code, 1860, in the absence of initial fraudulent or dishonest representation at the very inception of the transaction?

Secondly, Whether, an unpaid contractual price or service bill for civil labour rendered constitutes "property entrusted" so as to attract the offence of Criminal Breach of Trust punishable under Section 406 of the Indian Penal Code, 1860, and whether charges under Sections 406 and 420 IPC can legally co-exist on the identical set of commercial facts?

Thirdly, Whether the requirement of holding a prior inquiry or directing an investigation under the mandatory proviso appended to Section 202(1) of the Code of Criminal Procedure, 1973 prior to issuing process under Section 204 Cr.P.C. against an accused residing outside the local territorial jurisdiction of the Magistrate, is an essential jurisdictional pre-condition, and whether the presence of local co-accused inside the jurisdiction waives this statutory protection available to non-resident accused?

Fourthly, Whether the availability of an alternative statutory remedy to seek discharge before the Trial Court bars the High Court from exercising its inherent powers under Section 482 Cr.P.C. to quash a criminal proceeding that fails to disclose any penal offence at the threshold and falls within the parameters

laid down in *State of Haryana & Ors. v. Bhajan Lal & Ors., [1992 Supp (1) 335]*?

8. In analysing the first question for determination, the fundamental distinction between a mere breach of contract and the criminal offence of cheating under Section 415 IPC (punishable under Section 420 IPC) must be kept in mind. The statutory definition of 'cheating' under Section 415 IPC mandates three essential ingredients:

(i) deception of any person;

(ii) fraudulently or dishonestly inducing that person to deliver any property or to do or omit to do anything; and

(iii) such act or omission causing or being likely to cause damage or harm to that person. To bring a case within the four corners of Section 420 IPC, it is a *sine qua non* that the fraudulent or dishonest intention must exist at the very inception of the transaction.

9. A mere failure to keep a promise at a subsequent stage, or a failure to pay a disputed contractual balance after partial performance and substantial payments, does not retroactively convert a civil breach of contract into the criminal offence of cheating. This principle is encapsulated in Illustration (g) to Section 415 IPC itself, which clearly establishes that where a party enters into a contract with an initial intention to perform, but subsequently breaks the contract, he is liable only to a civil action for breach of contract and not be roped into the criminal charge of ‘cheating’.

10. This settled position of law has been consistently affirmed by the Hon'ble Supreme Court, in *Binod Kumar and Ors. v. State of Bihar and Anr. [(2014) 10 SCC 663]*, the Apex Court held that non-payment or withholding of charges/fees arising out of a work contract or commercial transaction does not attract criminal liability, and that converting a civil dispute for recovery of contractual dues into a criminal prosecution is an abuse of the process of Court, liable to quashing. Similarly, in *VESA Holdings Private Ltd. & Anr. v. State of Kerala & Ors., [(2015) 8 SCC 293]* and *Vir Prakash Sharma v. Anil Kumar Agarwal and Anr., [(2007) 7 SCC 373]*, it was held that every breach of contract does not amount to cheating unless dishonest intention is shown at the very beginning of the transaction. Most recently, in *Manish v. State of Maharashtra and Anr., [2025 SCC OnLine SC 707]*, the Hon'ble Supreme Court reiterated that where work was continued, bills were raised, and periodic payments were honoured by the employer, the element of dishonest inducement at inception stands completely dislodged, leaving no room for a charge under Section 420 IPC.

11. Learned Counsel appearing for Opposite Party No. 2 placed reliance upon the decision in *Ravindra Kumar Madhanlal Goenka & Anr. v. Rugmini Ram Raghav Spinners (P) Ltd., [(2009) 11 SCC 529]* to contend that quashing should be refused as eight construction bills remain unpaid. However, this Court finds that *Ravindra Kumar Madhanlal Goenka (supra)* is clearly distinguishable on factual scores. In *Goenka*, the complainant mill had paid money in advance to a cotton

commission agent who retained the money without supplying 100 bales of cotton, a classic scenario where initial entrustment and parting of money took place on a false promise. Here in the present case, by stark contrast, Opposite Party No. 2 parted with no property or advance money on inducement; he merely provided civil construction labour under a civil works contract, received periodic payments throughout the contract, negotiated the final accounts, and accepted substantial payments under a settlement. The admitted course of continuous commercial dealing; quotations, execution, periodic billing, periodic payments, negotiated adjustments, and near-complete disbursement, directly disproves any allegation of deception or dishonest intention at the inception of the transaction to attract the offence of cheating punishable under Section 420 IPC. Therefore, the First Question is answered in the negative, in favour of the petitioners.

12. Turning to the second question for determination, it is necessary to scrutinize the statutory definition of "Criminal Breach of Trust" under Section 405 IPC (punishable under Section 406 IPC). Section 405 IPC mandates two indispensable statutory ingredients:

(i) entrustment of property, or dominion over property, to the accused; and

(ii) dishonest misappropriation, conversion, or disposal of that property in violation of any direction of law or legal contract.

13. "Entrustment" is a substantive ingredient, not a mere technicality. A customer or employer who owes an unpaid balance or disputed bill to a service provider/contractor has not been "entrusted" with any property

belonging to that contractor. An unpaid contract price or a disputed debt represents a civil liability; it is not "property entrusted" in a fiduciary capacity, nor does it fall within the ambit of moveable property misappropriated by a debtor.

14. Furthermore, the legal concepts underlying "Cheating" (Section 415 IPC) and "Criminal Breach of Trust" (Section 405 IPC) are conceptually distinct and mutually exclusive, as such cannot be applied to identical facts simultaneously. In an offence of Cheating punishable under Section 420 IPC, the victim is dishonestly induced to part with property from the very inception as a result of deception whereas, in Criminal Breach of Trust under Section 406 IPC, the victim lawfully entrusts the property to the accused at the inception, and the dishonest intention or misappropriation develops subsequently. Therefore, both offences cannot dwell together on the self-same set of un-differentiated factual allegations of non-payment.

15. This legal principle has been firmly settled by the Hon'ble Supreme Court. In *Delhi Race Club (1940) Limited and Ors. v. State of Uttar Pradesh and Anr. [(2024) 10 SCC 690]*, the Apex Court explicitly held that although both offences involve dishonest intention, cheating and criminal breach of trust are mutually exclusive and different in basic concept. The Hon’ble Supreme Court emphasized that where a complaint invokes both Sections 406 and 420 IPC on identical, omnibus allegations of non-payment of contractual dues without alleging specific initial inducement for Section 420 IPC or explicit entrustment for Section 406 IPC, the complaint fails to establish either

offence. The same view has been taken by this Hon'ble Court in *Dreamz Collections and Ors. v. State of West Bengal and Anr., [2022 SCC OnLine Cal 1321]* and *Ranjan Sachdeva v. State of West Bengal and Anr., [2022 SCC OnLine Cal 1830]*.

16. Learned Counsel for Opposite Party No. 2 placed reliance on *Mushtaq Ahmad v. Mohd. Habibur Rehman Faizi & Ors., [(1996) 7 SCC 440]* to contend that both sections can be invoked when funds are withheld. However, *Mushtaq Ahmad (supra)* is also clearly distinguishable on factual scores, wherein, a school's management had specifically drawn identified Government funds allocated towards the complainant teacher's salary and allowances, and thereafter misappropriated those specific identified public funds, a classic case of entrustment and conversion of government funds held in trust. Here in the present case, by contrast, there was no identified property or funds handed over in trust by Opposite Party No. 2 to the petitioners; it is a simple claim for an unpaid contractual balance for labour rendered. Consequently, taking the complainant's case at its highest, the fundamental element of "entrustment" is conspicuously absent, rendering charge under Section 406 IPC wholly inapplicable. Therefore, Question No. II is answered in the negative, in favour of the petitioners.

17. Adverting to the third Question for determination, on the face of the cause title of the complaint as well as the revisional application, Petitioners Sourav Agarwal and Narayan Agarwal (Accused Nos. 1 and 2) permanently reside at Tollygunge, Kolkata situated indisputably

outside the local territorial jurisdiction of the learned Additional Chief Judicial Magistrate at Haldia, Purba Medinipur.

18. A perusal of the impugned Order No. 01 dated December 22, 2021, reveals that on the very day the private complaint was filed by the Opposite Party No. 2 under Section 200 Cr.P.C., the learned ACJM examined complainant Sk. Sirajul Islam on Solemn Affirmation (*S.A.*) and, without anything more, took cognizance and issued process/summons under Section 204 Cr.P.C. against all four accused persons, including the present non-resident petitioners, without postponing process to conduct an inquiry or direct an investigation under Section 202(1) Cr.P.C.

19. The legal necessity of this procedural filter stems directly from Parliament's amendment to Section 202(1) Cr.P.C. by Act 25 of 2005. The deliberate inclusion of the word "**shall**" in Section 202(1) Cr.P.C. (*"shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process..."*) makes it abundantly clear that holding an inquiry or directing an investigation prior to summoning an out-station accused is not discretionary, rather it is a mandatory statutory duty. Parliament incorporated this mandatory safeguard specifically to prevent unscrupulous litigants from filing false, frivolous, or vexatious complaints in far-off jurisdictions to harass innocent residents of distant places. This statutory mandate has been consistently interpreted and reaffirmed by the Hon'ble Supreme Court in *National Bank of Oman v. Barakara Abdul Aziz and Anr., [(2013) 2 SCC 488]* and

Vijay Dhanuka and Ors. v. Najima Mamtaj and Ors. [(2014) 14 SCC 638], as well as by this Court in *Abhishek Kapoor v. Kabir Suman* (*CRR 4680 of 2022, decided on September 16, 2026*) and a co-ordinate Bench of this Court in *Greaves Cotton Limited & Ors. v. State of West Bengal & Anr., [2023 SCC OnLine Cal 454]*.

20. The submission advanced on behalf of Opposite Party No. 2 that the presence of local co-accused (Managers and Representatives) within the jurisdiction of the learned ACJM Court, Haldia waived the requirement of an inquiry under Section 202(1) Cr.P.C. is fundamentally misconceived notion, thus legally untenable. The statutory safeguard under Section 202(1) Cr.P.C. is accused-specific. The statute turns on where *"the accused"* against whom process is to issue resides. Parliament gave this statutory protection to every non-resident individual accused to protect them from arbitrary summoning. The mere presence of local co-accused of a complaint within the jurisdiction of the summoning Court cannot extinguish, dilute, or waive the personal statutory right and protection granted by Parliament to an out-station co-accused. Furthermore, taking cognizance on a pre-typed cyclostyled order sheet by filling in blanks violates Rule 183 of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 and demonstrates non-application of judicial mind, as settled by a Co-ordinate Bench of this Court in *Chandi Charan Garani & Ors. v. State of West Bengal, [2021 SCC OnLine Cal 3788]*. Therefore, the third Question is answered in the affirmative, in favour of the petitioners.

21. Proceeding to the fourth question for determination, learned Counsel appearing for Opposite Party No. 2 placed heavy reliance on the decision of the Hon'ble Supreme Court in *State of Orissa v. Debendra Nath Padhi, [(2005) 1 SCC 568]* to contend that the petitioners ought to be relegated to the Trial Court to seek discharge at the appropriate stage. This Court finds itself unable to accept the aforesaid submission. The argument confuses the limitation on the Trial Court's power at the stage of framing charges under Sections 227/239/245 Cr.P.C. with the wide, plenary, and inherent jurisdiction vested in the High Court under Section 482 Cr.P.C.

22. The legal proposition that the availability of a remedy by way of discharge before the Magistrate does not operate as an absolute bar or embargo on the exercise of inherent powers under Section 482 Cr.P.C. is no longer *res integra*. In *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors., [(1998) 5 SCC 749]*, the Hon'ble Supreme Court specifically held that summoning an accused in a criminal case is a serious matter and that the availability of an alternative remedy of discharge does not preclude an aggrieved party from approaching the High Court under Section 482 Cr.P.C. to prevent abuse of process. This principle was recently reaffirmed in *Delhi Race Club (1940) Ltd. (supra)*, where the Apex Court held that an accused need not undergo the rigor, harassment, and ordeal of a criminal trial when the complaint, taken at face value, fails to *prima facie* make out any penal offence.

23. In *Debendra Nath Padhi (supra)*, the Hon'ble Supreme Court explicitly recognized in paragraph 29 of the report, that the High Court under

Section 482 Cr.P.C. possesses wide powers to consider unimpeachable documents of sterling quality to prevent abuse of process of the Court. Here, the petitioners rely not on defence documents, but on the complainant's own written complaint, initial deposition under Section 200 Cr.P.C., and settlement receipts. Where a criminal proceeding is manifestly attended with *mala fide* or where the allegations do not disclose any cognizable offence, forcing the accused to face trial merely because a discharge application could be filed at a later stage would amount to a complete failure of justice. The case falls squarely within categories (1), (3), and (7) of the principles laid down in *Bhajan Lal (supra)*. Therefore, the fourth Question is answered in the negative, in favour of the petitioners.

24. In addition, it is an admitted fact on record that the underlying civil work contract was executed with M/s. Frontline Corporation Ltd. (a juristic person). Under Indian criminal jurisprudence, vicarious liability cannot be imported into IPC offences to prosecute company Directors without arraying the corporate entity itself as a principal accused and without establishing specific individual active roles with criminal intent, as settled by the Hon'ble Supreme Court in *S.K. Alagh v. State of U.P. & Ors., [(2008) 5 SCC 662]* and in *Sharad Kumar Sanghi v. Sangita Rane, [(2015) 12 SCC 781]*. The non-arraignment of M/s. Frontline Corporation Ltd. renders the prosecution against petitioners as its directors legally unsustainable on this ground as well.

25. In the facts and circumstances of the present case, allowing the criminal law machinery to be weaponized as a coercive tool to enforce

recovery of disputed contractual dues after a settled commercial transaction constitutes a blatant abuse of the process of Court.

26. Accordingly, the revisional application being C.R.R. No. 2281 of 2023 is allowed.

27. The proceedings in Complaint Case No. CR-585 of 2021 under Sections 406 and 420 of the Indian Penal Code, 1860, including Order No. 01 dated December 22, 2021, taking cognizance and issuing process, presently pending before the 2nd Court of the learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur, are hereby quashed, in respect of the Petitioners Sourav Agarwal and Narayan Agarwal.

28. Pending Connected application(s), if any, are also disposed of accordingly.

29. Interim orders, if any, stand vacated.

30. There shall be no order as to costs.

31. Let a copy of this judgment along with the Trial Court Records (T.C.R.) be transmitted to the learned Trial Court forthwith for necessary information and compliance.

32. Case diary, be returned to the Learned Counsel for the State.

33. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)