IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 4464 OF 2024

ARJUN SINGH & ORS.

VS

THE STATE OF WEST BENGAL

For the Petitioners : Mr. Arabinda Chatterjee , Sr. Adv.

Mr. Pradyat Saha, Adv.

For the Opposite Party

No. 2 : Mr. Avishekh Guha, Adv.

Mr. Subham Chatterjee, Adv.

Ms. Sonal Agarwal. Adv.

Mr. A. Dutta, Adv.

Reserved on : 22.06.2026

Judgement on : 07.08.2026

Uploaded on : 07.08.2026

CHAITALI CHATTERJEE DAS, J.:-

1. This is an application under Section 528 of BNSS, 2023 for filed by the petitioners, for quashing the proceedings being complaint case no. 48937 of 2024 and order dated 22.7.2024, under Section 200 of the Code of Criminal Procedure, 1973, under Section 406/411/417/418/420/422 of the Indian

Penal Code pending before the learned chief Metropolitan Magistrate at Calcutta.

Facts of the case

2. M/s. Global mega ventures Private Limited(GMV) is a company registered under the Companies Act, 1956 having its registered office at Bhopal and petitioner no. 2 is the Director of GMV company .In pursuit of development, in a property of non-agricultural land, GMV Company in the year 2014 through its petitioners approached the Opposite Party no. 2 for sanction loan for the construction of the property located in the District of Bhopal, Madhya Pradesh, as the developer of the same property. The opposite party no. 2 is a non-banking finance company having its registered office at Mumbai. The loan application dated 29.5.2014, for sanctioning of construction finance loan up to INR 15,00,00,000 for the purpose of construction of GMV Ananta was sanctioned for 10 years for a tenure of 36 months by a sanction letter dated 25.6.2014 and the loan amount of ₹12,44,82,844 was disbursed to GMV company on 30.11.2015. The company through the petitioners made regular EMI payments as per schedule provided by opposite party No. 2 however, due to financial constraint faced by demonetisation, the company experienced severe economic difficulties, leading to a shortfall in the payment of certain EMI's and the opposite party no. 2 issued the demand notice under section 13(2) of SARFAESI Act, 2002 dated 22.3.2018. Challenging the same an application was filed before the Debt Recovery Tribunal, Jabbalpur Madhya Pradesh by the petitioner and the said demand notice was withdrawn by the opposite party no. 2 on 22.3.2018, vide affidavit dated 31.7.2019.

3. The Tribunal disposed of the application on 17.2.2020 at the instance of the counsel of the Opposite Party no.2 and on account of settlement arrived at between the parties and the Opposite Party withdrew the demand draft dated 22.3.2018, along with all subsequent actions and the recovery proceeding was dismissed. No appeal was preferred against the order passed by DRT. Jabalpur. Suppressing the said fact and about the proceedings before DRT,Jabalpur the opposite party filed a complaint under section 200 of Code of Criminal Procedure before the learned Chief Judicial Magistrate, Calcutta on 22.3.2024 against the petitioners alleging commission of offences under the aforesaid sections as mentioned as above.

4. The learned Magistrate took cognizance of the said complaint and transferred the case to the court of learned Metropolitan magistrate, 11th Court, Calcutta for further enquiry and disposal according to law. The learned Metropolitan Magistrate, 11th Court, Calcutta vide order dated 12.6.2024, admitted the application under Section 200 of Cr.P.C and directed to issue Summons. On 22nd of July 2024, the learned Magistrate passed an order issuing warrant of arrest against the petitioners without affording any opportunity to the petitioners to appear before the court. Being aggrieved thereby this revisional has been filed.

Submissions

5. The learned Advocate representing the petitioner argued that the initiation of the impugned proceeding is bad in law and while issuing warrant of arrest the Learned Court did not satisfy himself regarding compliance of the provisions laid down either Code of Civil Criminal Procedure since no cause of action arose within the jurisdiction of the Learned Magistrate . No reason has been assigned while allowing the application under section 200 of the Cr.P.C and therefore the order is liable to be set aside. It is further argued that the issue relates to recovery of money from the petitioners, which is technically of a civil nature, but it has given a colour of criminal content. The complaint has been lodged when civil remedy before the Debt recovery tribunal has already been availed and issue was resolved after arriving at a settlement and the proceeding initiated by the complainant was dismissed in the year 2020. It is further argued that since the petitioners paid the EMI regularly no question of deception at the inception could arise . No ingredients to constitute offence under Section 406 and 420 of the IPC can be inferred from any of the averment made by Opposite Party no.2. The learned advocate relied upon a decision ***of Lalit Chaturvedi and others versus State of Uttar Pradesh and Another.*** [1]**.** Accordingly, prayed for quashing of the entire proceeding.

6. On the other hand it is argued by the learned advocate representing the Opposite Party no. 2 that the order issuing summons was never challenged and no prayer is made for quashing the entire proceeding. On 22.7.2024, the order was passed issuing warrant and the petitioner cannot pray for quashing the entire proceeding when specific prayer was made for setting aside the order of the Learned Magistrate. It is further argued the cognizance was not taken in accordance with law and without adhering to the procedure to be observed where the accused res9ides outside the jurisdiction of the court and in this regard relied upon the decision reported in ***Vijay Dhanuka and Others vs.***

[1] 2024 SCC online SC 171

Najima Mamtaj and Ors.[2] In view of the observation made by the Hon'ble Supreme Court, the learned Magistrate held enquiry as the complainant was examined during S/A and hence no infirmities can be found in the said order. Moreover the order taking cognizance or issuing summons were never challenged but since they failed to turn up the Learned Magistrate passed the order issuing warrant. It is further submitted that further the petitioners never intended to pay despite demand notice and therefore the complaint had to be lodged. Therefore the matter should be returned to the magistrate for considering the procedural corrections if found by the court.

<u>Analysis</u>

7. Heard the submissions of both the learned advocates and perused the materials on record.

8. In the case of ***Vijay Dhanuka and others versus Najima Mamtaj and others (Supra),*** two questions arose for consideration before the Hon'ble Supreme Court, which are, i) in case in which the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, whether it would be mandatory to hold enquiry or investigation as he thinks fit for the purpose of deciding whether or not, there is sufficient ground for proceeding? 2) whether Magistrate before issuing summons has held the enquiry as mandated under Section 202 Cr.P.C.

9. Section 200 of the Code inter alia provides for examination of complainant on oath and the witnesses present , if any which reads as follows:-

> "***Section 200. Examination of complainant****- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant*

[2] (2014) 14 SCC 638

and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses--
(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:
Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

10. In ***Vijay Dhanuka (supra)*** it was held that in case in which the accused is residing beyond the territorial jurisdiction of the Magistrate whether it would be mandatory for the Magistrate to hold inquiry or the investigation as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. The Hon'ble Supreme Court discussed the provision under Section 202 of Cr.P.C and held that the use of the expression 'shall' and the background and the purpose for which the amendment was made with effect from 23.06.2006, there is no doubt that inquiry of the investigation as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate. At the same time it was held as in paragraph 14 of ***Vijay Dhanuka(Supra)* that-**

"In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under

Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:

"2.(g)inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court";

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any.This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

11. In the instant case since the complainant as well as another witness was examined there remains no doubt that the enquiry as envisaged under Section 202 of the Code was held by the Learned Magistrate but the question arises how far the Learned Magistrate was justified in issuing summons or about the prima facie existence of materials to issue the summon or any reflection if any can be found in his order or not when it is glaringly visible that no part of the cause of action arose within the jurisdiction of the Learned Magistrate ,the complaint company had no privity of contract with the petitioners and the alleged loan agreement was executed with Reliance Home Finance with the present petitioners and both the parties had their respective place of business either at Mumbai or at Bhopal, Madhya Pradesh .

12. Therefore from the above facts and circumstances and on close scrutiny of the complaint lodged under Section 200 and the order passed on 26th April, 2024 there remains no rooms left than to hold that the Leaned Magistrate failed to apply his judicial mind while making the enquiry . In addition the Learned Magistrate further failed to ascertain sufficiency of ingredients to constitute the offences under Section 406,420 of IPC or even it is a fit case for issuing process.

In the decision of ***Delhi Race Club (1940) Ltd. & Ors. Vs State of Uttar Pradesh & Anr. (Supra)*** the Hon'ble Supreme Court discussed the differences of criminal breach of trust and cheating and took reference of the case of S.W Palantikar & ors vs State of Bihar where it was held ;

> *24. This Court in its decision in S.W. Palanitkar & Ors. v. State of Bihar & Anr. reported in (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*
>
> *"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (sb) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of*

such trust. 10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of Criminal Appeal No. 3114 of 2024 Page 21 of 31 omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

It was further held in paragraph 25 that ;

" 25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.
In order to constitute a criminal breach of trust (Section 406 IPC): -

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: - a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of: i. any direction of law prescribing the method in which the trust is discharged; or ii. legal contract *touching the discharge of trust (see: S.W.P. Palanitkar (supra).*

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: - 1) deception of any person, either by making a false or misleading representation or by other action or by omission; 2) fraudulently or dishonestly inducing any person to deliver any property, or 3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))"

13. After the decision of ***Delhi Race Club (1940) Ltd. Vs. State of UP and Anr.***[3] there is plethora of decision that both the allegations of 406 /420 of Indian Penal Code against same accused cannot go simultaneously but the Learned Magistrate passed the order issuing summons against the petitioners under Section 406 and 420 IPC.

14. In the said case of ***Lalit Chaturvedi (supra)*** the charge-sheet was submitted under Section 420 and 406 of the Indian Penal code. The allegations was regarding purchase of woods, waste and there was non-payment and outstanding due amount of Rs. 1,92,91,358 which was not paid and the complaint was lodged against the accused persons. The Hon'ble Supreme Court held in paragraph 5 which is as follows:-

[3] 2026 INSC 626

> "5" *This court ,in a number of judgements has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to an violation of the contractual terms ; and criminal offence under Sections 420 and 406 of the IPC. Repeated judgements of this court, however, are somehow over looked and are not being applied and enforced. We will be referring to these judgements. The impugned judgement dismisses the application filed by the appellants under Section 482 of Cr.P.C on the ground of delay /laches and also the factum that the charge sheet had been filed on 12.12.19 this ground and reason is also not valid."*

15. The Hon'ble Supreme Court further took note of the case of ***Md. Ibrahim Vs. State of Bihar***[4] where the ingredients of the offence of cheating were discussed. Similarly took note of ***V. Y. Jose Vs. State of Gujarat***[5] and held:-

> *"which explicitly states that a contractual dispute of breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of cheating as defined under Section 415 of the IPC is promise or representation thereof, from the very beginning of the formation of contract. Further in the absence of the averments made in the complaint petition where from the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of Cr.P.C."*

[4] (2009) 8 SCC 751
[5] (2009) 3 SCC 78

16. The factual matrix unveils in this case that the complaint was filed under Section 200 of the Code of Criminal Procedure by Reliance Commercial Finance limited against the accused persons out of whom petitioner no 1 was a co-borrower and petitioner no. 2 was the Director of borrower company and the other two are the wife and son of petitioner no 2 .On perusal of the said complaint prima facie execution of a loan agreement dated June 30, 2014 between the abovenamed petitioners with Reliance Home Finance Ltd. are found to be admitted .The said Reliance Home Finance had its registered office at Mumbai and a Branch office at Bhopal, Madhya Pradesh .The office of Global Mega Venture was at Bhopal and all the petitioners are residents of Bhopal .Primarily it appears that the agreement was executed at Bhopal .The Complainant Company is having its registered office at Park street but apparently no agreement was executed with the said company. The record reveals that a Debt Recovery proceeding was initiated against the petitioners by said Reliance Home Finance in the year 2019 and on the basis of an application filed on behalf of the authorised agent of Reliance Home Finance to withdraw the said proceeding, by an order dated 17.2.2020 the proceeding was dismissed .The written complaint is bereft of any of the said fact rather averred that the petitioner was entrusted with huge sum of money of Rs 124482844/-.

17. The opposite party did not file any Affidavit in opposition challenging such fact of withdrawal of the proceeding at DRT,Jabalpur despite receiving the copy of this revisional application. The complaint further disclosed that pursuant to the resolution plan of RHFL by its lenders and in terms of the circular of RBI, RHFL has entered into the agreement to transfer its business by way of sale on a going concern basis ,to Reliance Commercial Finance Ltd. In the written complaint nothing is found mentioned that subsequently this complaint company developed any further business relation or at all any intimation was given after the change of the company. In the decision of ***Vijay Kumar Kela & Anr. Vs CBI***[6] it was observed and held by the Hon'ble Supreme Court that dispute arises out of Banking transaction are commercial transactions having overwhelmingly or predominantly elements of civil disputes . More so where the settlement is arrived of the loan account before DRT and if the Bank is allowed to proceed with the criminal prosecution after such settlement, it would adversely impact the sanctity of the settlement which has become the part of the judicial forum like DRT.

18. On taking overall factors the complainant company appears to be an alien in the entire transaction to lodge the complaint against the petitioners after the order of Debt Recovery Tribunal dismissing the proceeding on arrival of settlement of the dispute between the petitioners and the Reliance Home Finance Company .The Learned Magistrate without considering the above factors mechanically issued the summons against the petitioners for committing offence under Section 406 and 420 IPC which has no sanctity in the eye of law.

19. It is settled proposition of law that the power of High Court in quashing a criminal proceeding or FIR or Complaint in exercise of its inherent jurisdiction under Section 482 Cr.P.C is distinct and different and is of wide plenitude with no statutory limitation but to be exercised in accordance with the guidelines engrafted in such power like to prevent abuse of the process of the

[6] 2026 INSC 588

court or to secure the end of justice. It is further settled that criminal cases having overwhelmingly and predominantly civil flavour stands on a different footing for the purpose of quashing particularly the offences arising from commercial, financial, mercantile ,civil ,partnership etc.

20. When on the face of the complaint itself ,it is evident that the dispute essentially pertains to a loan transaction ,in respect of which some part of the loan amount has already been repaid and the complaint is bereft of the essential ingredients necessary to constitute offences under sections 406 or 420 IPC, continuation of the criminal proceedings would be wholly unwarranted .This is particularly situation where proceedings under the SARFASEI Act had been initiated by the company which had sanctioned the loan and same were withdrawn at the instance of the said company; where there is no privity of contract whatsoever between the present complainant company and the petitioners ; and where the order passed by the of DRT, Jabalpur has attained finality . In such circumstances, there remains no justifiable basis for permitting the criminal proceedings to continue against the petitioners .Allowing such proceedings to continue would amount to nothing but gross abuse of process of law and the criminal justice system.

Conclusion

21. Hence this CRR being 4464 OF 2024 is hereby allowed. All connected applications are hereby disposed of.

22. The entire proceedings pending before the learned chief Metropolitan Magistrate at Calcutta are here by quashed against the petitioners and all orders passed in that proceedings are set aside.

23. Urgent certified copy Urgent of the order if applied for be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]