IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1487 OF 2023

JAKSON LIMITED & ORS.

VERSUS

STATE OF WEST BENGAL & ANR.

For the Petitioners	**:**	**Mr. Sandipan Ganguly, Sr. Adv.** **Ms. Nandini Chatterjee, Adv.** **Ms. Priyanka Sarkar, Adv.**
For the Opposite Party no. 2	**:**	**Mr. Arnnab Das, Adv.** **Ms. Syeda Romana Sultan, Adv.**
For the State	**:**	**Mr. Z.N. Khan, Adv.** **Md. Kutubuddin, Adv.**
Reserved on	**:**	**30.04.2026**
Judgement on	**:**	**22.06.2026**
Uploaded on	**:**	**22.06.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. The instant Revision Application has been filed for quashing of all proceedings of G.R case no. 2182 of 2021 arising out of Entally Police Station case no. 296 of 2021, dated 02.09.21 under Section 420/406 and 120B of the Indian penal

Code,1860 recently pending before the Learned Additional Chief Judicial Magistrate, Sealdah.

Complaint case

2. The petitioner is a company incorporated under the Companies Act, 1956 having its headquarter at Uttar Pradesh and its marketing office at several places, including at Kolkata. The petitioner company dealing in the production and manufacturing of diesel generators in collaboration with USA based for namely Cummins and diesel Gensets cater use of every sector from residential to commercial to heavy Industrial Gensets. A written complaint was initiated by one Partha Pratim Nandi, Deputy General Manager, Account and Finance, M/S Dollon's Food Products Private Limited, against the present petitioners alleging of cheating and Breach of trust . It was the case of the complainant that on or about 21.1.2011 M/s Kaiser oils Private Limited, placed purchase order of 380/304 KVA/KW DG set having a cost price of ₹16, 75, 000 to a quotation dated 25.10.2010 given by the petitioner company. The order was accepted by the petitioner company on the terms and conditions as agreed between the parties. In terms of such agreement and earnest amount of ₹5, 02, 500 to be paid as an advance at the time of issuance of purchase order and also agreed that the balance amount would be paid against proforma invoice before dispatch, which is to be completed within a period of 4 to 5 weeks from the date of placement of the purchase order. It was further agreed that in case the purchase is not completed within the stipulated period, 50% of the amount would be forfeited and the balance amount would be returned subject to deduction of such amount of expenses as maybe incurred by the petitioner company during the process of such transaction. However due to unavoidable circumstances their group company namely M/s Kaiser was unable to proceed further and lateron Dollon Food Products approached the accused company for procuring a Silent DG set and accordingly the accused company issued an offer by a quotation dated 10th August 2019 and by a letter dated 4th November 2019 Kiser requested the accused company to adjust the previous amount from the account of Kaiser to the account of Dollon in respect of their order of the year 2019.The accused though replied and accepted their request on account of lockdown it was not materialised. Immediately after lockdown Dollon sent the purchase order in the year 24th July2020 but in reply the accused company informed such advance amount was not reflected in their Books of account but the Banker's certificate shows the said amount was debited from the account of Kaiser Oil on 28th January 2011. Thereafter legal notice was sent but the accused company remained silent and therefore the said company deceitfully took the money entrusted to them.

The case of the petitioner

3. The petitioner no. 3 to 9 are the Directors of the said company and they represent the board of the company from different dates of their inclusion in the board. The petitioner no. 2 is the marketing officer of the company and petitioner no. 10 is the territory manager of the petitioner no.1 company and is responsible for the operations in the state of West Bengal. On 21.1.2011 Kaiser Oils Pvt. Ltd. placed the purchase order of a specific description having a cost of Rs 16,75,000/-pursuant to a quotation which was duly accepted with certain terms and conditions .As agreed an earnest amount of Rs 5,02,500/- to be paid as an advance amount at the time of issuance of purchase order and balance amount to be paid as an advance before dispatch which would be completed within a period of 4-5 weeks from the date of placement of such order and in case of default 50% of such amount to be forfeited and the balance amount to be returned subject to deduction of such amount of expenses as may be incurred by the petitioner during process of such transaction .The purchaser company failed to pay the balance amount ant to take delivery pf the goods with a request from time to time not to terminate the agreement and also informed their inability to pay the balance amount for taking delivery. Thereafter on 24.4.2014, a proforma invoice dated 30.4.2014 for ₹14, 09, 263 for supply of 380 KVA, silent DG set was forwarded by the petitioner company, requesting payment of balance amount for dispatch of the said set. However, said amount was not sent again, causing termination of the purchase order which was duly communicated to the purchaser company. Suddenly after a gap of five and half years, the said Kaiser oil Private Limited by a letter dated 4.11.2019 intimated that due to unavoidable circumstances, they could not take delivery of the 500 KVA DG set. By a letter dated 4.11.2019, Kaiser oil Private Limited informed that M/s Dollon's Food product Private Limited would be placing order for DG set to the petitioner company and requested adjustment of the advance amount paid back in the year 2011 with the purchase order to be given by said Dollon's Food products Limited. Pursuant to a quotation given by the petitioner company on 24.2.2020 a fresh purchase order was placed by M/s Dollan food product Private Limited for delivery of factory assembled 500 KVA, silent DG set comprising of Cummins engine with Genset Controller and Alternator mounted on a common base complete with fuel tank with their features, amounting basic value of ₹2,650,000.00/- The said purchase order dated 24.7.2020 indicated payment terms as advance of ₹5,02,500 as paid and balance to be paid on receipt of proforma invoice. The consideration value for the set was stated exclusive of 18% extra GST freight charges up to site at Hooghly and delivery to be made within 3 to 4 weeks from the date of purchase order. The quotation dated 24.2.2020 raised upon invitation of Dollon'sFood product Limited in a fresh quotation made on specific invitation pursuant to which purchase order was placed by M/s Dolan‘s Food product Limited.

4. It is their further case that by a letter dated 24.7.2020 on behalf of Dollon‘s Food product, the Director, Amartya Sikdar wrote to Territory manager of Jakson Limited, Jakson House during the tenure of such quotation dated 24.2.2020 that M/s Dollon's Food products had to completely shut down their office, owing to lockdown declared by state government whereby purchase of said DG set got delayed beyond their control. It is denied by the petitioner company that in the said letter dated 24.7.2020, it was contained on behalf of the product Limited that the petitioner company had agreed to adjust ₹5, 02, 500 paid by M/s. Kaiser oils against the bill to be raised on M/s. Dollon's Food Product Private Limited. The said money was not returnable and therefore the request made by the complainant company to amend the purchase order and it was duly informed that nothing could be stressed out regarding the deposit of any advance amount by M/S Dolln's Food Products Private Limited in favour of the additional company. Despite repeated request made by the petitioner company to amend the purchase order for enabling urgent dispatch of DG said the purchase order was never amended and no advance amount was paid, thereby making the purchase order itself, null and void.

Submission

5. The argument advanced by the learned Advocate representing the petitioner that the present Revisional application arises in such factual backdrop, which, when properly appreciated, unmistakably reveals a calculated attempt to convert what is at best. A long concluded and commercially abundant transaction into a criminal prosecution, sold with a view to recover an amount which has, by operation of Law, become irrecoverable in civil procedure. The contention of the learned advocate of the petitioner is that in the decision of ***Indian Oil Corporation versus NEPC India Limited and Others***[1] has empathetically cautioned that criminal proceedings cannot be permitted to be used as a shortcut for enforcing civil claims as a tool of coercion in commercial disputes. Similarly, in ***G. Sagar Suri and Another versus stage of U.P and others***[2]. It has been held by honourable Supreme Court that the criminal process or not to be allowed to degenerate into an instrument of harassment with dispute is essentially civil nature. The present case squarely falls within the category and question of contemporaneous allegation of fraud or deception arises. It is for that argued that the period that follows the year 2014 is of decisive legal significance for nearly 5 years. Thereafter there was a complete and unbroken silence between the parties. No demand for delivery was made, no claim for refund was asserted and no grievance was articulated by the purchaser. The purchaser who was under an obligation to perform did not take steps to revive the transaction or assert any right. In this regard relied upon in the decision passed in ***V.Y Jose and Another versus state of Gujarat and***

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[1] (2006) 6 SCC 736
[2] (2000) 2 SCC 636

***Another*[3],** where it was held that disputes arising from contractual non-performance cannot be elevated into criminal offences in the absence of fraudulent intent at inception. That apart M/S Dolan Food products Limited has no local standi to be a complainant as it is an admitted and incontrovertible position that the transaction was of 2011 was entered into exclusively between the petitioner company and M/S Kaiser Oils Private Limited, and the said entity alone placed the purchase order, made the advance payment and stood in a contractual relationship with the petitioners.

6. The Learned Counsel further submitted that the doctrine of Privity of contract is not mere technicality but enforceability of contractual rights. The inter se arrangements between third parties cannot create liability against the petitioner. The issue of limitation lies at the very heart of the present matter and provides the clearest indication of mala fide nature of the prosecution. The alleged advance payment was made in 2011 and even if the communication of 2014 is taken as relevant point, the limitation period for instituting a civil suit for recovery would have expired by 2017 and the initiation of criminal proceeding in 2021, after a delay of nearly a decade and as a deliberate attempt to bypass the statutory part of limitation. Use of criminal law in that manner is impermissible as held by the Hon'ble Supreme Court in the above mentioned decisions. It is further argued that absence of essential ingredients of offences under Section 420 and 406 IPC and in this regard relied upon to the decision of ***Mohammad Ibrahim and Others versus state of Bihar and Another*[4].** Furthermore there is no inducement, no dishonest intention at

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

inception, no delivery of property by the complainant, no entrustment and no misappropriation where an act can be a failed, commercial transaction between two parties which was never completed. Lastly, in the decision of ***Sunil Bharti Mittal versus CBI***[5]**,** where it has been held that doctrine of Vicarious liability has no application in criminal law unless expressly provided and that individuals cannot be summoned solely on the basis of their designation. Accordingly prayed for quashing the entire proceeding.

7. The submission advanced by the learned advocate representing the opposite party no. 2 at the outset challenges the very filing of this application for questioning at the initial stage immediately when investigation started and the accused persons were sent notice under section 41-A of the Cr.P.C. Therefore, the application for quashing which has been preferred at such nascent stage without completion of proper investigation, and before trial is liable to be dismissed. In this regard he relied upon the decision of ***Kamal Shivaji Pokarnekar versus State of Maharashtra***[6]. It is also the contention of the learned advocate that exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. In this regard relied upon the three Judges Bench in the case of ***State of Karnataka versus M Devendrappa***[7]**,** paragraph 5, 6 & 9**.** It is submitted that the allegations in the FIR and grounds mentioned in the written complaint of the opposite party no. 2 are defective ,the complainant clearly makes out triable offences before the Learned Magistrate and the involvement of the petitioners/accused persons in the commission of the offence. There is dishonest consignment of facts

[5] (2015) 4 SCC 609
[6] (2019) 14 SCC 350
[7] (2002) 3 SCC 89

amounts to the offence of cheating and the term “dishonest” is also defined in Section 24 of the Indian Penal Code. The group of company of the Opposite Party no. 2 M/s Kaiser Oils Private Limited, by a letter dated 4th September, 2019 intimated the petitioner company that against purchase of a 500 KVA DG set an advance payment of ₹5,02,500 vide cheque dated 21.1.2011 drawn on Allahabad Bank was made, but due to unavoidable circumstances, they were unable to take delivery and further requested the petitioner company to adjust the said amount with the purchase order by its group company, namely Dollon’s Food Product. The present petitioner company on receiving the same requested the Opposite Party no. 2 that they are transferring advance payment of 5,02,500/- from the account of Kaiser Oil to the account of Dollon’s Food product. Accordingly, the revised purchase order was sent on 24.7.2020 and after that, it was intimated by the petitioner company that the amount paid by Opposite Party no. 2 as advance payment is not appearing in their books of account. The bank certificate acknowledges that such cheque was debited from the account of M/S Kaiser Ois Private Ltd on 28.1.2011.

8. It is the stand taken by the learned advocate that even if there is a civil dispute, there is no bar in coexistence of both civil and criminal proceedings. In the decision of Indian oil Corporation versus NEPC India, as relied upon by the learned advocate of the petitioner, it was held that a commercial transaction or a contractual dispute apart from furnishing, a cause of action for seeking remedy in civil law may also involve a criminal offence. Accordingly prayed for dismissal of this Revisional application.

Analysis

9. Heard the submissions made by both learned Advocates. On careful consideration of the materials and record as well as the submissions made before this court it is evident that the complaint was lodged by OP no.2 Dollon's Food Product Private Limited company alleging cheating, breach of trust and criminal conspiracy against the petitioner company . The genesis of the dispute rests on a business deal initially took place between the petitioner company and M/S Kaiser Oils Pvt Ltd in the year 2011 when a 500 KVA DG set was ordered from the petitioner company. An account payee cheque to the tune of ₹5,02,500 was also issued towards advance payment on 21.1.2011 drawn on Allahabad Bank. The materials on record unequivocally disclose that since after 2011, no communication was made between the parties regarding further payment on delivery of such DG set or demand of early delivery of the product or even regarding non-payment of any amount between those two parties till 2014 when again at the request of M/s Kaiser a n invoice was generated which was again failed due to unavoidable circumstances .Thereafter on 10th August 2019, the present complainant company approached the petitioner company for procuring a silent DG set and accordingly, quotation was issued on 10 August 2019, and then it was contended that the earlier payment made by Kaiser Oil Pvt Ltd of ₹5,02,500 to be adjusted against the bill to be raised regarding such new order. Therefore starting from 2011 M/S Kaiser who originally entered into the deal continuously failed to pay the balance and to take delivery of product showing a filmsy ground of unavoidable circumstances. The record glaringly manifest the casual approach on the part of Kaiser in completing the deal despite giving privilege even after the violation of the stipulated time period mentioned in original agreement containing the clause of termination on such, again in the year 2014 and after a sabbatical of 5years suddenly approached with a request to adjust the said amount of earnest money with the new deal to be placed by a separate company Dollon's Food Product. The record further reveals that said Kaiser Oil Pvt Ltd could not complete the deal and subsequently requested the present petitioner company that due to unavoidable circumstances, they could not take delivery of the equipment and inform that the Dollon's Food Product will place the order and accordingly requested to transfer such advance amount from account of Kaiser Oil Pvt Ltd to account of Dollon's Food Product Limited and then requested them to adjust the said advance amount. After this letter dated 4.11.2019, the purchase order was placed on 24.7.2020, for supply 500 KV silent DG set with a request for early delivery by Dollon's Food Product but failed to complete the transaction because their company had to shut down going to lock down declared by state government with effect from 28.3.2020. Therefore from the above factual backdrop the legal question arises in absence of any privity of contract between the complainant company and the petitioner company in respect of a previous deal which was executed between Kaiser Oil and the Petitioner company way back in the year2011 in respect of a separate deal can any claim to adjust the earnest money paid in connection with the previous deal can be adjusted and in case of refusal to entertain such request or denial of such adjustment gives rise to lodge any criminal complaint alleging cheating and breach of trust by the subsequent company. It is admitted that a fresh order was placed by Dollon's Food product with a specific description . The vital point arises in such factual backdrop, whether non-compliance or refusal to adjust, such amount can attract any criminal liability or not. That apart whether this court in exercise of power under Section 482 Cr.P.C can interfere at the stage when on the basis of the complaint lodged by the opposite party no. 2, investigation is still going on since 02.09.2021 and the Revisional application was filed on 20.04.2023. It is disputed that the genesis of the present matter lies in a commercial transaction balance amount in connection with the transaction was not paid and the goods was not delivered.

10. According to the submission of the learned prosecution the officer in charge has forwarded the letter to the learned prosecution which reveals that during investigation it is found the complainant's own narrative was that purchaser failed to the pay the balance consideration which strikes at the very root of the transaction. In absence of such payment, the petitioner company was under no obligation to proceed with dispatch and the transaction necessarily remained incomplete. In the case of ***Indian oil Corporation versus NEPC India Limited (Supra)*** Hon'ble supreme Court held and observed that:-

> *"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 remedies are time consuming and do not adequately protect the interest of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down 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 do criminal prosecution should be deprecated and discouraged."

11. In the case of ***G. Sagar Suri & Anr versus state of U.P & Others (Supra)*** It was held by Hon'ble Supreme Court that criminal process or not to be allowed to degenerate into an instrument of harassment where the dispute is essentially civil in nature. It was held that:-

> *"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a shortcut 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 High Court exercise its restriction 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."*

12. In the present case the case of the complainant emerges from a deal entered upon between M/s Kaiser Oils Private Limited who ordered a 500 KVADG set from the accused company for which an advance payment of Rs. 5,02,500/- was allegedly made by an account payee cheque on 21.1.2011. Due to circumstances, the said company was unable to proceed further with the purchase order later on M/S. the Dollon's Food products Private Limited approached the accused company for procuring a silent DG set and an offer letter was issued on 10.8.2019 by M/S Food products Private Limited. Since M/S Kaiser oils Private Limited could not procure the said item against which the advance was made request was made on 4.11.2019 to the accused company to adjust transfer of the said amount of ₹5, 02, 500 from the account of M/S Kaiser oil to M/s Dolln's Food Product. Pursuant to such request and repeated persuasion, the accused company accepted the request, and after lockdown, the purchase order was sent on 24.7.2020 to the accused company. In reply to the same, the accused company stated that such amount is currently not appearing in their books of accounts. Despite several requests made to the petitioner company to act upon email dated 4.3.2020, the petitioner company remained silent . Accordingly lodged such complaint.

13. In the decision relied upon by the learned advocate of the opposite party no. 2 in ***Kamal Shivaji Pokarnekar versus state of Maharashtra (Supra)*** it was observed by the Supreme Court that-

> **"***Quashing of criminal proceeding is called for only in a case when the complaint does not disclose any offence or is frivolous, vexatious, or oppressive. If the allegation set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal".*

It was also observed by the Supreme Court taking note of the decision passed in ***Indian Oil Corporation versus NEPC (India) Limited (supra)*** that the only question relevant is whether the averment in the complaint spell out the ingredients of a criminal offence or not.

14. In the decision of Hon'ble three Judges Bench in ***State of Karnataka versus M. Devendrappa (Supra)*** also it was held where such inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of court, and (iii) to otherwise secured the ends of justice. It was held that while exercising power under the Section 482, the court does not function as a court of appeal or revision. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone court exists.The parameters or situations where this powered under section 482 of Cr.P.C can be exercised has been elaborately dealt with in the decision of ***State of Haryana and Ors. vs Bhajan Lal and Ors.***[8]**,** where it was categorically mentioned that if such situations are found in the complaint/FIR also such power can be exercised.

15. In the present case from the submission of the learned prosecution backed by the letter address to the prosecution by the investigating officer, it is glaringly visible that the investigation is no longer at the nascent stage and a primary opinion can be found regarding the commercial nature of transaction and non-fulfilment of certain terms and conditions in connection with such transaction and failure to remit the balance transaction strikes at the very route of transaction. However without putting much emphasis to such observation which is subject to be accepted after a judicial scrutiny by the Magistrate the content of the complaint by taking in its entirety seems to be so

[8] 1992 Supp (1) SCC 335

improbable to attract any of the ingredients under which the allegations are made . The facts and circumstances as portrayed before this court and found from the record further reveals that there is a prolong delay in taking out a complaint by the complainant, who was never a party to the original deal which entered into between the present petitioner company and M/S Kaisar Oil Private Limited and such transaction could not be completed because of the silence on the part of said Kaisar Oil Private Limited, which has been described as only due to unavoidable circumstances, raised after five years. The relationship between such M/s Kaiser Oil and the present Opposite Party no. 2 company M/s Dollon's Food Product is absolutely silent and only because of the complaint made by the petitioner company intimating about non-receiving of any advance long back in the year 2011 from M/s Dollon's Food Product do not attract the ingredients to constitute an offence and either under section 420 IPC or under section 406 IPC. In accordance with the terms and conditions, admittedly M/S Kaiser Oil failed to pay the balance amount and accordingly the said DG set was never delivered, and there was silence for long five years. No demand notice or any other proceeding was initiated on behalf of said M/s Kaiser Oil either to return the balance amount or to deliver the goods and even after five years on their behalf, no such interest was expressed and if their request is not fulfilled by the present petitioner company by no stage of imagination can give rise to any offence under the aforesaid provision. There is clear absence of entrustment of property or dominion over property, dishonest misappropriation, conversion, use or disposal of such property or violation of any legal direction or contractual obligation in respect of such entrustment as required to Section 406, IPC ***(V.Y Jose & Anr versus***

state of Gujarat and Anr. emphasised) . At best the original complaint being M/s Kaiser Compant at best claimed breach of terms regarding the earnest money paid in terms of the terms and agreement agreed upon between them and that also will be breach of terms and contract which can be claimed by filing civil suit.

16. The parameters to exercise in the situation as described in the decision of ***State of Harayanan vs Bhajanlal (supra)*** in clause (1) & (5) which is as follows ;

> *"(1) -Where the allegations in the First Information Report or the complaint ,even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused .*
>
> *XXXXXXXXX*
>
> *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."*

In the present case these parameters are apparent .

Conclusion

17. Therefore, considering the overall factor circumstances and) of the written complaint and the submissions made before the court by filing their written notes of argument and also considering the submission by the prosecution and the letter of the investigating officer coupled with connected facts and circumstances, this Court is of considered view that the instant case is purely coming under the above two categories and further it is attended with a malafide an ulterior motive and hence this court must exercise the inherent power to quash the proceeding qua the petitioners in absence of any justified reason to allow this proceeding to be continued, which would be otherwise sheer abuse of the process of court and hence is liable to be quashed.

18. Accordingly, this CRR 1487 of 2023 is hereby allowed. The entire proceedings of G.R case no. 2182 of 2021 arising out of Entally Police Station case no. 296 of 2021, dated 02.09.21 under Section 420/406 and 120B of the Indian penal Code, 1860 recently pending before the Learned Additional Chief Judicial Magistrate; Sealdah is hereby quashed against the petitioners herein.

19. All other connected applications, if any, are hereby disposed of.

20. Urgent certified copy of the Order, if applied for, be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]