

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 65 of 2025

**With
IA No. CRAN 4 of 2025**

**CRAN 5 of 2025
CRAN 6 of 2025**

**Kundan Kumar Singh & Anr.
Vs.
Parag Mukhopadhyay**

For the Petitioners : Ms. Antalina Guha
Ms. Shinjita Ray
Ms. Sweta Barman

For the Opposite Party No.1 : Mr. Anand Keshari
Ms. Pubali Debnath
Ms. Sneha Bhattacharya
Ms. Dhriti Chanda

Heard on : 19.05.2026

Judgment on : 17.06.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioners herein have prayed for quashing of the proceeding being no. AC 3456/2024 corresponding to ACGR 3852 of 2022, lodged under sections 120B/420/409/467/468/471 of the Indian Penal Code (IPC) presently pending before learned Judicial Magistrate 9th Court, Alipore.

2. The dispute pertains to one car parking space situated at Pritha Apartment, Kolkata 700075. Said property was taken into symbolic possession by the State Bank of India under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act) on 07.11.2013. Subsequently an E-auction notice dated 29.10.2021 was issued by the Bank stipulating that the sale would be on “as is where is basis” and “whatever there is basis” and that the possession of the Bank is symbolic in nature and that the intending purchasers are required to inspect and verify the assets before participating in the auction.

3. Case of the petitioner is that the opposite party no. 1 herein/complainant voluntarily participated in the auction on 30.12.2021 and was declared the highest bidder. Petitioner’s further case is that the Bank repeatedly requested the opposite party no. 1 to collect the sale certificate and to take possession of the property. Despite the same, the opposite party no.1 lodged the instant complaint against the petitioners who are Bank official, resulting the aforesaid criminal proceeding.

4. During investigation the investigating officer repeatedly submitted progress report before the learned magistrate recording that the bank had taken steps for physical possession and the authorization for such possession has been obtained and that the opposite party no. 1 already occupying the parking space partially. However physical possession of the entire car parking space had been taken by the Bank on 20.07.2023 and the opposite party no. 1 was requested to take physical possession of purchased entire car parking space.

5. In the above background the investigating agency submitted the final report on 06.10.2023 with a prayer to close the investigation as the dispute is civil in nature.

6. In the meantime one Writ petition was also filed by one Mrs. Chobi Kar Roy on 07.12.2023, claiming relief against the Bank for having taken forcible possession of car parking space belonging to her, in which the opposite party no. 1 and the petitioner were implicated as party respondent being WPA no. 22120 of 2023. Said Writ application was finally disposed of with an observation that the parties should file suit for redressal of their grievances. Thereafter on 23.02.2024 the opposite party no. 1 filed an application under section 173(8) of Cr.P.C seeking further investigation. On 20.11.2024, the application of the opposite party under section 173(8) of the Cr.P.C was taken up for hearing and the learned Magistrate was pleased to take cognizance and transfer the case to learned judicial Magistrate, 9th court Alipore for disposal. Learned counsel for the petitioner further contended that in an execution case filed by opposite party no. 1 before the Consumer Disputes Redressal Commission, an order dated 10.06.2024 was passed directing the opposite party no.1 to take delivery of the sale certificate and possession from the Bank authorities. Ignoring aforesaid background of the case, on 05.12.2024 the opposite party no. 1 was examined by the court below under section 200 of the Cr.P.C, and process has been issued under section 204 Cr.P.C against the petitioners for alleged commission of offence under the abovementioned sections.

7. Being aggrieved by the aforesaid proceeding learned counsel for the petitioner argued that the order issuing process passed by the court below is

a cryptic one. Furthermore the opposite party no.1 in his initial deposition did not disclose the order dated 10.06.2024 passed by the Consumer Dispute Redressal Commission, whereby the said forum directed the opposite party no. 1 to take sale certificate and also to take possession of the car parking space from the authorised officer of the Bank. Suppressing the aforesaid material order, the opposite party no. 1 proceeded with the complaint case and the learned Magistrate mechanically issued process against the petitioners by the impugned order dated 05.12.2024.

8. He further submits that the dispute between the parties are overwhelmingly civil and commercial in nature. No ingredient of the alleged offences are disclosed and the criminal proceeding has been initiated to pressurise the bank officials who are acting in discharge of their official duties. Therefore he prayed for setting aside the impugned order dated 05.12.2024, by which the court below had issued process, along with a prayer for quashing the entire proceeding.

9. Learned counsel appearing on behalf of the opposite party no. 2/ complainant vehemently opposed such prayer. His contention is that the complainant is the bona fide purchaser who had participated in the e-auction of the car parking place measuring 148 Sq.ft. and had paid the entire consideration amount of Rs. 2,90,000/- as per the terms of the e-auction notice. Even after making such payment, the accused person had intentionally and deliberately failed and neglected to hand over the documents pertaining to the said property of the complainant herein. Though the bank had asked the complainant to collect the sale certificate from the bank but the opposite party no. 1 came to learn that the said car

parking space belongs to Mrs. Chobi Kar Ray. Finding herself deceived and cheated, the complainant was left with no other alternative than to approach the police for redressal of her grievances, which has given rise to the instant preceding. Therefore though the Bank had repeatedly requested the complaint to collect the sale certificate but the Bank intentionally suppressed that while sale certificate was offered to the complainant, the physical possession of the said property is in dispute because one Mrs. Chobi Kar Ray is already enjoying the peaceful possession of the said car parking space.

10. He further submits that even if the bank had taken physical possession of the said car parking space on 20.07.2023 but such claim of Bank cannot be considered, as the same was done after the initiation of the present preceding. Any subsequent action cannot absolve the criminal liability of the accused person as the accused person on the date of lodging FIR had already committed the offence of criminal breach of trust and cheating.

11. He further stated that the investigating officer in his report has acknowledged the fact that the complainant was in physical possession of 70 sq.ft., inspite of making the entire payment for 140 sq.ft. The investigating officer also found that the same car parking space was being claimed by Mrs. Chobi Kar Ray. The petitioner though relied upon the observation made in WPA no. 22120 of 2023, that the dispute is purely civil in nature but it cannot be accepted at this stage, since a mandamus appeal being MAT no. 210 of 2024 has been filed by said Mrs. Chobikar Ray,

challenging the said order dated 07.12.2023 passed by the learned Single Judge and which is still pending for adjudication.

12. The petitioner also alleged that opposite party no. 1 has suppressed the order dated 10.06.2024 passed by Consumer Dispute Redressal Commission, but it does not hold good in view of the fact the order was passed only after the present preceding was initiated in 2022. Moreover it is well within his right to approach the Consumer Forum and also the criminal court for appropriate remedies in accordance with law. A criminal proceeding cannot be quashed only on the ground that a parallel civil/quasi civil litigation is pending by and between the parties. The fact that bank has not even enquired about the fact that the property was already encumbered is germane and that it was well within their knowledge that the property could not have been sold and such fact shows that the accused person had the requisite mens rea for the commission of the alleged offence. He further argued that though the petitioners have claimed that they are protected by section 32 of The SARFAESI Act but from the said provision, it is clear that the protection is available to the Reserve Bank of India or the Central registry or any secured creditor or any of its officer. Since the petitioners do not fall under any of the above-mentioned categories, the petitioner cannot seek protection under that section. On perusal of petition of complaint along with the initial deposition of complainant, recorded by the learned Magistrate, it is clear that the accused person had the knowledge, that the property in question never belonged to the said Bank and from the very inception the accused persons knew that they would not be in a position to sell the said property. Therefore the instant application does not deserve any

merit and should be dismissed with cost and with a direction to conclude the trial at the earliest.

Decision

13. In *Neeharika Infrastructure Pvt. Ltd. Vs State of Maharashtra*, reported in **(2021) 19 SCC 401** a three Judges Bench of the Supreme Court laid down the principle that the jurisdiction under section 482 is very wide but conferment of wide power requires the court to be cautious. However at the same time, a court if he thinks fit regard being had to be parameters of quashing and the self-restraint imposed by law more particularly, the parameters laid down in *RP Kapoor Vs. State of Punjab, AIR 1960 SCC 866* and *State of Haryana Vs. Bhajanlal, 1922 (sup) 1 SCC 335*, has the jurisdiction to quash the FIR/complaint. It was further held that when High Court exercises the jurisdiction under section 482 Cr.P.C., it only has to consider whether or not the allegations in the FIR discloses the commission of a cognizable offence but is not required to consider on merits whether the allegations make out a cognizable offence, or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

14. Now I will have to carefully scan the complaint in respect of which court below has taken cognizance upon offences after examining the complainant under section 200 Cr.P.C. and on prima facie satisfaction issued process against the petitioners under section 120 B/420/409/467/468/471 of the IPC vide order dated 5th December, 2024, in order to ascertain whether the petitioners are justified in taking up the contention that the allegations raised thereunder did not contain the

ingredients to constitute the alleged offences or whether the respondent had made out a prima facie case for trial. In that regard it is worthwhile to take note of the fact that the complainant/opposite party herein has alleged commission of offences under section 120 B/420/409/467/468/471 of the IPC against the petitioners I will first refer to the ingredients to constitute such offences to consider the said question

14.1 To constitute offence under section 420 of IPC, the accused must have deceived someone and that by such deception the accused must induce a person **(a)** to deliver any property or **(b)** to make alter destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property **(c)** the accused must have done so dishonestly.

14.2 In order to constitute offence under section 409 IPC the essential ingredients are as follows:-

- (i)** The accused was a public servant or a banker or merchant or agent or factor or broker or an attorney
- (ii)** In such capacity accused was entrusted with certain property or he gained domain over such property which was not his own
- (iii)** Accused committed criminal breach of trust with respect to such property

14.3 The offence under section 467 is an aggravated form of the offence under section 466 IPC. The essential ingredients to constitute the

offence punishable under the said section are (a) commission of forgery (b) that such commission of forgery must be in relation to a document purporting to be

- (i) A valuable property or
- (ii) A will or
- (iii) An authority to adopt a son or
- (iv) Which purport to give authority to any person to make or transfer any valuable security or
- (v) Receipt the principle interest or dividend thereon
- (vi) To receive or deliver any money, movable property or valuable security or any document purporting to be an acquittance or receipt acknowledging the payment of money
- (vii) And acquittance or receipt for the delivery of any immovable property or valuable security

14.4 For Offence punishable under section 468 IPC, the ingredients are

- (a) A Commission of forgery
- (b) that the accused did so intending that the document or electronic record forged shall be used for the purpose of cheating.

14.5 To bring home the charge under section 471 either of the two requirements 'knowledge' or 'reason to believe' must be proved in the sense that they are deducible from various circumstances of the case. The essential ingredients of the offence under section 471 are as follows:-

(a) The accused fraudulently or dishonestly used a document or electronic record as genuine

(b) The accused new or had reasoned to believe that the document or electronic record was a forged one

14.6 The offence punishable under section 120B IPC to constitute the criminal conspiracy, there must be agreement between two or more persons. The agreement should be to do or cause to be done some illegal act or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must prove that some act besides the agreement was done by one or more of the parties in pursuance of it.

15. Now the question is whether the allegations in the complaint along with initial deposition are sufficient to constitute aforesaid alleged offences

16. The entire genesis of the dispute arises out of an auction sale conducted by the Bank under the SARFAESI Act. The advertisement published in the daily newspaper expressly disclosed about

(i) Symbolic possession

(ii) “as is where is basis” and

(iii) Requirement of prior inspection by intending bidders.

17. The opposite party no.1/complainant participated in the auction with full knowledge of the aforesaid conditions. The investigating officer after investigation specifically concluded that the dispute is civil in nature. This High Court also in WPA No. 22120 of 2023 observed that the dispute is civil in character and parties ought to pursue civil remedies. It was also observed

that the writ petitioner's property is totally distinct and different from the auctioned property and the schedule of both the properties are different.

18. It bears no repetition that the gravamen of the offence under section 415 of the IPC is providing of false and fraudulent representation at the inception of the transaction and thereby to induce the aggrieved to deliver property. In the fact of the instant case there appears to be no allegation that the petitioners herein had made any false representation to the opposite party, or any wilful misrepresentation. That apart no property is alleged to have delivered by the opposite party, pursuant to any representation of the petitioners herein, nor has the petitioners received any property from the opposite party. Thus, even if the entire allegation levelled in the petition of complaint is taken in its entirety, no *prima facie* case of cheating can be said to have been made out against the petitioners as there was no *malafide* intention from the very inception of the transaction to cheat the opposite party. Therefore the essential ingredients of the offence of cheating under section 420 of the IPC as sought to be foisted upon the petitioners by the Opposite party no.2 in the letter of complaint is missing.

19. So far as allegation under section 406 is concerned, in the conspectus of allegations in the instant case, there do not exist any allegation of any entrustment of any valuable property or its subsequent misappropriation by the opposite party/complainant with the petitioners, which are the primary ingredients to constitute the offence of criminal breach of trust.

20. In connection with the allegations levelled under section 409 IPC, it appears that the petitioners are bank officials who discharged their official duties in course of auction proceeding under statutory mechanism.

Therefore no entrustment coupled with dishonest misappropriation has either been alleged or demonstrated. Infact the opposite party no.1 deliberately suppressed while lodged the complaint, that the Consumer Commission by its order dated 10.06.2024, directed the complainant to take sale certificate as well as possession from the Bank and such suppression also demonstrate *malafide* intention on the part of the complainant.

21. In order to constitute offence under section 467 of the IPC, commission of the offence of forgery is an essential ingredients. The offence of forgery has been defined under section 463 of the IPC as making of any false document or false electronic record or part of a document or electronic record with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed. Thus, making of false document is an essential ingredient of offence of forgery under section 464 of the IPC. The first clause clearly states that a person is said to make a false document to dishonestly or fraudulently makes, signs, seals or executes a document or part of a document with the intention of causing it to be believed that such document or part of document was made signed sealed executed transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made signed sealed or executed.

22. On perusal of the final report submitted by the investigating officer in the form of closure of investigation, it appears that there exists no iota of allegation which even satisfies the requirement of making a false documents per se the petitioners herein. It only appears that the allegation of forgery

has been made in the complaint on an apprehension without their being any actual commission of offence. No allegations have been levelled in the complaint for creation of any false document within the meaning of section 464 of the IPC against the petitioners. There appears to be no iota of evidence that the petitioners have enjoyed any wrongful gain by causing wrongful loss to the opposite party. Infact the allegation of forgery is vague and omnibus. No allegation has been made about manipulation of documents. Thus, the primary requirement for the offence of forgery i.e. '*making a false document*' by the petitioners herein is absent in the complaint and the order of the court below clearly shows that he did not apply his judicial mind while considering the fact that even if the allegations levelled against petitioners are taken to be true they cannot be held liable under relevant provisions for the commission of the offence of forgery under the Indian Penal Code.

23. In the instant case meeting of mind and connivance between the accused persons which is the basic ingredients that constitutes the offence of criminal conspiracy under section 120B of IPC is completely missing in the complaint and there is nothing to show that the petitioners/the accused persons in pursuance of a common design had acted anything for any wrongful gain.

24. The Apex Court in ***Delhi Race club, 1940 limited and Ors. Vs. state of UP and another***, reported in **2024 SCC online SC 2248** has laid down that to constitute of the offence of cheating criminal intention is necessary at the time of making false and misleading representation i.e. since inception. Mere proof of entrustment is sufficient in case of criminal

breach of trust. Thus, in case of criminal breach of trust the offender is lawfully entrusted with the property and thereafter he dishonestly misappropriated the same. Whereas in case of cheating the offender fraudulently or dishonestly induced a person by deceiving him to deliver any property therefore charge under section 406 and 420 of the IPC cannot go together hand in hand.

25. The Opposite party no.1/complainant deliberately suppressed the order of the consumer commission as stated above. By non-disclosure the complainant has concealed the existence of the order by a competent Forum which obviously is the causative incident for the opposite parties allegation of perpetration of the aforesaid offences against the petitioners

26. During investigation I.O. forwarded a letter on 30.01.2023 which discloses that the complainant is parking her car at a car parking space at the said building but according to him the area he is using is only approximately 70 sq.ft., though he purchased an area of 148 sq. ft. from accused bank and it was further alleged that the remaining portion of car parking space was somehow been occupied by a different vehicle. Therefore, the real dispute all along was in respect of handing over possession of entire 148 sq.ft. to the complainant by the Bank. But nevertheless from the four corners of the case there is no iota of evidence that the bank while put the property in auction had made any fraudulent disclosure in respect of their entire ownership of 148sq.ft. in the garage space.

27. The investigating authority while submitted final report in the form of closure of investigation stated that investigation revealed

“(i) *The complainant had purchased the subject garage on e-auction*

(ii) *The said space was sold by the Bank Authority 'as is where is', as is what is' and 'whatever there is' basis as per rules and regulations of bank after taking symbolic possession of the said garage.*

(iii) *Neither the subject garage space nor the others garage space of the alleged build is demarcated clearly. The owners are keeping their respective cars on mutual understanding.*

(iv) *So, Bank had appeared before DM, 24(PGS (S) under SARFAESI At for obtaining p[physical possession of that garage and finally took physical possession as per order of DM, 24 PGS (S) on 20.07.23.*

(v) *The complainant was also keeping his car at that space since after his purchase from October 2021 to till 20.7.23 i.e. the date on which accused Bank Authority took physical possession of the subject garage space for handling over the sale certificate, original Title Deeds of the said property as well as the physical possession of the subject car parking space to the instant complainant as per rules.*

(vi) *Despite receiving intimation from the accused Bank authority, the instant complainant showed reluctance in taking the Sale Certificate, Original Title Deeds of the said property as well as in taking physical possession of the subject car parking space for which the instant case was registered.*

(vii) *A Civil Case Vide Case No. CC/27/2023 is till pending before, Ld. District Consumer Disputes Redressal Commission, Alipore over the same issue."*

28. This High Court while disposed of WPA no. 22120 of 2023 has made categorical observation that the remedy of the petitioner here is to seek a declaration that the bank acted de hors its powers and exceeded jurisdiction under section 14 of the SARFAESI in illegally taking possession of the petitioners property and to seek further remedy of recovery of possession of her property which has been allegedly taken by the bank illegally and thirdly the petitioner may also seek a declaration that the sale conducted in respect of the secured asset by the bank does not bind the petitioner in any manner. Therefore this High Court granted liberty to the petitioner to approach before competent civil court having jurisdiction with the issues sought to be raised by the petitioner by way of a properly constituted suit.

29. Such observation of this High Court also clearly shows that the dispute between the petitioners and the complainant was all along over

possession and/or recovery of possession but not over the ownership of the bank and for which this court directed to approach before competent civil court. Though the complainants contention is that a mandamus appeal is pending against the order passed in the said writ application but pendency of such appeal is not at all relevant until and unless, such order is set aside. The observation made by the Single Bench and the consumer commission still hold good. The consumer forum while disposing the Miscellaneous Application no. MA 10 of 2024 in complain case no. CC 27 of 2023 have made the following observation which the complainant has suppressed in complaint filed on 10th June, 2024

“The complainant and Ops are present. Today is date fixed for hearing of the M.A. application being NO. 10/2024 dated 08/04/2024. Heard the both side and perused the M.A. application and prayer of the Ops, hence direction is given to the complainant to take sale certificate and physical possession of the property as per schedule of sale certificate from the authorized officer of SBI but reimbursement of any expenses are not considered in this stage. Hence the M.A. application being No. 10/2024 is disposed of . Complainant files reply today. Copy not served and not filed on record. Fix 02/08/2024 for evidence by OP”.

30. The advertisement published by the Bank in daily newspaper clearly states about symbolic possession of which has been taken by the authorized officer of bank will be sold on ‘as is where is’, ‘as is what is’ and ‘whatever there is’ basis on 30.11.2011 for recovery of Rs. 16,16,418.87/-. The terms and condition of the sale uploaded in the website of the secured creditor/bank clearly stated about ‘symbolic possession’ wherein also the specified date and time during which inspection of secured asset to be sold has been mentioned and it is also stipulated that the intending bidders should satisfy themselves about the assets and there specification in column 12. It is not the case of the complainant that no such inspection

was carried out by the investigation agency in terms of column 12 of the terms and condition of sale. Moreover, it is also required to be mentioned that clause 13 (r) of the said terms and condition clearly stipulates

“In case of any dispute arises as to the validity of the bid(s), amount of bid, EMD or as to the eligibility of the bidder, authority of the person representing the bidder, the interpretation and decision of the Authorized officer shall be final. In such an eventuality, the bank shall in its sole discretion be entitled to call of the sale and put the property to sale once again on any date and at such time as may be decided by the Bank. For any kind of dispute, bidders are required to contact the concerned authorized officer of the concerned Bank branch only.”

31. The Bank by its letter dated 20.07.2023 had clearly requested the complainant to take possession from the bank immediately along with the certificate of sale. Therefore a bare perusal of the allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they do not carry the essential ingredients to constitute the alleged offences. The factual position reveals that the genesis as also the purpose of criminal proceeding is vaxious and the dispute involve is essentially civil in nature. The defacto complainant have given a cloak of criminal offence in the issue. All these aspects of the matter were not considered by the concerned magistrate. The order impugned does not reflect that he at all considered

- (i) The final report submitted by investigating agency in the form of closure of the investigation
- (ii) The finding of this High Court in WPA no. 22120 of 2023
- (iii) The order passed by the consumer commission
- (iv) Absence of ingredients of the alleged offences.

32. In this context the relevant order of magistrate by which he issued process against the petitioners required to be reproduced below:-

*"05.12.24
Today is fixed for SA
Record is taken up for SA
The complainant is examined u/s 200 of the Cr.PC
Prima facie offence made out against accused persons u/s
120B/420/409/467/468/471 of the IPC.
Complainant to file requisite at once.
Issue process against the accused persons.
Fix 06.02.25 for SR and appearance."*

33. In ***Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and Ors.*** reported in (1998) 5 SCC 749 the apex court cautioned in the following words:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

34. Infact from the facts and circumstances of the case it is manifestly clear that defacto complainant has implicated the present petitioners, who are the employees of the bank to put pressure for obtaining possession of the garage space and to settle the civil dispute between the parties and therefore it clearly attracts the parameters laid down in **RP Kapoor case** (supra) as well as **Bhajanlal's case** (supra) and therefore the criminal complaint is liable to be quashed invoking this court jurisdiction under section 482 of the Cr.P.C., as also I have no hesitation to hold that

permitting continuance of the instant criminal proceedings in the aforesaid circumstances would result in abuse of the process of court and also miscarriage of justice.

35. In view of above **CRR 65 of 2025** is allowed.

36. The impugned proceeding being complaint case no. AC 3456 of 24 presently pending before 9th judicial magistrate Alipore is hereby quashed.

37. Connected Applications also thus stand disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)