

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1260 OF 2023

RIA DAS

VS.

STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Mit Guha Roy, Adv.
Mr. Sayan Sarkar, Adv.
Ms. Sneha Saha, Adv.

For the Opposite : Mr. Ayan Bhattacharjee, Sr. Adv.
Party Mr. Shounak Mondal, Adv.

Last heard on : 31.03.2026

Judgement on : 09.06.2026

Uploaded on : 09.06.2026

CHAITALI CHATTERJEE DAS, J.:-

1. This is an Application under Section 482 of the Code of Criminal Procedure, 1973 filed by the petitioner, the wife of the Opposite Party no. 2 for quashing of criminal proceeding instituted under Section 200 of the Code of Criminal Procedure, 1973 which is presently pending before the Learned Judicial Magistrate, 2nd Court at Alipore.

Brief Fact of the Case

2. The fact of the case in brief is that on 17th of January, 2020 the petitioner got married with the Opposite Party no. 2 under Hindu Rites and Customs.

The petitioner lodged one complaint against the opposite party no. 2 /husband on demand of dowry and physical and mental torture on her by the husband and his mother. That apart all the stridhan articles ornaments were entrusted upon the Opposite Party no. 2 and mother-in-law of the petitioner as per demand of them with a promise that those will be returned as and when will be asked for. It was further alleged that since marriage the Opposite Party no. 2 and his family members caused immense mental and physical torture upon the petitioner and during Covid-19 at the time of lock down and quarantine the situation became unbearable. The physical and mental torture perpetrated upon the Opposite Party no. 2 increased drastically on and from 23.03.2020 and she was further assaulted under direct instigation of the mother-in-law of the petitioner. She was even not allowed to visit a doctor and lastly ousted from her matrimonial home on 25.03.2020 by the Opposite Party no. 2. After that the petitioner lodged the complaint after normalcy returned from Covid situation and hence there was a delay in lodging the complaint on 21.01.2021 before the Officer-in-charge of Haridevpur Police Station through speed post which was received on 25.01.2021 which was registered against the Opposite Party no. 2 and the mother-in-law under Section 498A/406/34 of the Indian Penal Code along with Section 3 &4 of the Dowry Prohibition Act. The Learned Magistrate took cognizance and the matter is pending before the Learned Judicial Magistrate, 5th Court at Alipore.

- 3.** The petitioner also filed an application under Section 12 of PWDV Act and by an order dated 19.07.22 a Protection Order was granted in favour of the petitioner whereby an order of restrain has been passed against the Opposite Party no. 2 and his mother from committing any acts which falls into the category of domestic violence upon the petitioner. Further direction was given to the Officer-in-charge of the concerned police station for rendering necessary legal assistance and protection to the petitioner from all sorts of domestic violence. A matrimonial suit has also been filed against the Opposite Party no. 2 by the Petitioner which is pending before the Learned District Judge at Alipore and subsequently transferred to the Learned 13th Court, Alipore being matrimonial suit no. 283 of 2021. The Opposite Party no. 2 appeared in the said suit and is contesting the same by filing written statement. A Misc. case under Section 24 of the Hindu Marriage Act has also been filed by the petitioner in the said matrimonial suit seeking maintenance pendente lite from the Opposite Party no. 2 and the matters are pending for hearing and disposal.
- 4.** It is the further case of the petitioner that despite taking all effort the stridhan articles were not returned to her, hence she had to lodge a further complaint under Section 200 of Cr.P.C before the Learned Additional Chief Judicial Magistrate at Alipore on 22.01.2021 and proceeding has been transferred before the judicial Magistrate, 6th Court at Alipore for trial and on the basis of an application filed under Section 93 and 94 of Code of Criminal Procedure, 1973 the Learned Magistrate passed an order dated 03.12.21 directing the officer-in-charge of Haridevpur Police Station to conduct a search and seizure at the matrimonial home of the petitioner for recovery of the listed stridhan articles. A search was conducted on 3.12.21 and the Police Officer seized

substantial portion of the stridhan articles save and excepting the gold jewellery and costly articles.

5. She further preferred an application under Section 125 Cr.P.C. presently pending before the Learned Judicial Magistrate; 2nd Court at Alipore whereby a direction has been passed against the present Opposite Party no. 2 to pay an amount of Rs. 10,000/- per month to the Opposite Party no. 2 has an interim maintenance allowance.
6. The Opposite Party no. 2 has also filed a matrimonial suit before the Learned District Judge at Alipore which has been transferred to the Learned Session Judge at Alipore for trial. During the course of pendency of the above matrimonial proceeding and counter proceedings between the parties the Opposite Party no. 2 maliciously and only to harass the petitioner filed another complaint under Section 200 of the Code of Criminal Procedure dated 21.05.22 before the Learned Additional Chief Judicial Magistrate at Alipore which was subsequently made over before the Learned Judicial Magistrate, 2nd Court at Alipore. On 20.07.22 the Learned Judicial Magistrate 2nd Court at Alipore after examining the complainant/ opposite Party no. 2 herein under Section 200 of Cr.P.C. found that a case under Section 420 of the Indian Penal Code has been made out against the petitioner and accordingly a process has been issued against the petitioner under Section 204 of Cr.P.C, 1973. Accordingly summon was served upon the petitioner who appeared before the Magistrate but before she could present herself before the concerned Court an warrant of arrest has been issued against the petitioner vide an order dated 26.9.22. After that she filed an Application under Section 205 Cr.P.C. before the Learned Judicial

Magistrate, 2nd Court at Alipore and therefore has challenged entire proceeding and prayed for quashing of the entire proceeding.

Submission made on behalf of the petitioner

7. The Learned Advocate representing the petitioner has relied upon the decision of the Hon'ble Supreme Court in **Sunil Bharti Mittal Vs. Central Bureau of Investigation**¹ whereby order of summoning the appellants were set aside and it was observed that a wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because of complaint has been filed. It is argued that the learned Magistrate failed to consider that several litigations are pending between the parties and mostly against the opposite party no. 2 who having no other option filed the false case against the petitioner. Accordingly, prayed for setting aside the order impugned. More so there are absolutely no ingredients to attract section 420 IPC and the complainant has lodged the complaint in order to wreak vengeance against the petitioner and is a counter blast to the steps taken against him by the petitioner, therefore the proceeding ought to have been quashed.

Submissions made on behalf of the opposite party no.2

8. Per contra the submissions advanced on behalf of the Learned Senior Advocate representing the Opposite Party no. 2 that around 2014 the Opposite Party became acquainted with the petitioner through Facebook and over the time their interaction developed into a close intimate relationship marked by

¹ (2015) 4 SCC 609

frequent communication over social media platform but the petitioner from the very inception of the relationship harboured a dishonest intention to exploit the Opposite Party no. 2. In the year 2018, a proposal to marriage was given to the Opposite Party no. 2 which he accepted and they got married on January 17, 2020 but during this entire period the petitioner throughout exert pressure upon the complainant to provide her money in the nature of loan in order to meet expenses relating to the proposed marriage and even after marriage she did not change and continued with demand of further sums and in that manner over a period of time he procured a total sum of Rs. 9, 91,501 from the Opposite Party no. 2/ complainant. After that when he insisted to repay the same found the reluctant attitude of the petitioner to return the money and then he stopped providing further financial assistance and this changed the behaviour of the petitioner who became hostile and rude towards him and his family members. Ultimately she left the matrimonial home on false pretext severed co-habitation. Lastly she threatened him to implicate him in false criminal case and demonstrated that she never intended to enter into a genuine marital relationship.

- 9.** The Learned Senior Counsel further contended that it is a settled proposition of law inherent jurisdiction this Court under Section 482 of Cr.P.C. is to be exercised sparingly, with circumspection and only in the rarest of rare cases only where inter alia the complaint on the face of it does not disclose any offence. In the present case the complaint as a whole spotlessly discloses that essential ingredient of the offence of cheating punishable under Section 420 of the Indian Penal Code are absolutely missing. The allegation depict a

systematic course of conduct on the part of the petitioner accused and it is trite law that the truthfulness or otherwise of the allegation cannot be adjudicated upon and this court ought not to conduct a meticulous examination of evidence or embark upon a mini trial in the exercise of a inherent jurisdiction under Section 482 Of the Cr.P.C. The Learned Advocate put reliance in the decision of Hon'ble Supreme Court in **State of Haryana and Ors. vs. Bhajan Lal & Ors.**² Para 102 / 103. Further relied upon the decision reported in **CRR 719 of 2023 Prem Kumar Agarwal vs. State of West Bengal and Anr.,Criminal petition no. 9147 of 2022 Andhra Pradesh High Court V. Sirisha vullendu Sirish vs. State of Andhra Pradesh and in Criminal Application no. 4038 of 2022 Bombay High Court at Aurangabad , Gajanan vs. State of Maharashtra** on the point that matrimonial relationship does not negate the evidence of cheating under Section 420 of Indian Penal Code. It is also argued that counter blast is no ground for quashing and on this point relied upon the decision reported in **Ram kishan vs. State of Rajasthan and others**³. Furthermore the delay in filing the complaint does not in any manner vitiates the proceeding or furnish a valid ground for quashing the same and in this matter relied upon the decision of **Skoda Auto VolksWagen (India) Pvt. Ltd. vs. State of Uttar Pradesh and Others**⁴, para 18.

10. It is further submitted that there was no suppression whatsoever on the part of the Opposite Party no. 2 /complainant in the complaint petition itself as it is very clear and unambiguous to record that complainant demanded

² 1992 Supp (1) SCC 335

³ (2021) 4 SCC 778

⁴ (2021) 5 SCC 795

more money even after refusing to pay further she lodged false complaint against the complainant. The said averment evidently discloses the existence of prior proceeding initiated by the petitioner/ accused and therefore the allegation of suppression is ex facie untenable. More so, even if there is any omission to disclose prior proceeding the same would not, in law constitute a valid ground or quashing of a criminal complaint.

11. The Learned Advocate further relied upon the decision reported in **CBI vs. Aryan Singh and Ors⁵**. and would submit that where the specific allegation of monetary transaction with details are furnished which prima facie establishes the allegation the liberty should be given to raise the same before trial court. It is the further contention of the learned advocate that in the present case the act of the petitioner /accused constitutes a clear case of cheating wherein the Opposite Party no. 2 dishonestly induced to part with money on the basis of false representation and assurances made from the very inception. Lastly, it is submitted that no detailed reason is required on a summoning order and in this regard relied upon the decision of Hon'ble Supreme Court in **Bhushan Kumar & Another vs. State (NCT) and Another⁶**, **UP Pollution Control Board vs. Mohan Meakins Limited and Others⁷**, **Kanti Bhadra Shah & Anr. vs. State of West Bengal⁸**.

⁵ (2023) 18 SCC 399

⁶ (2012) 5 SCC 424

⁷ (2000) 3 SCC 745

⁸ (2000) 1 SCC 722

Analysis

12. Heard the submissions of both the Learned Advocates. On perusal of the materials on record prima facie a chequered history of pending litigations between the parties can be found over their matrimonial discord. The instant complaint is lodged by the husband, Opposite Party no. 2 which apparently depicts the petitioner as an accused of cheating of a hefty amount which was given to the petitioner gradually and year after year since 2018. The complaint discloses about the prior relationship between the parties before marriage which subsequently culminated into a marriage in the year 2020. But unfortunately the relationship turned sour and the marital discord cropped up resulting filing of number of cases with allegation and counter allegations by the parties against each other, pending before various courts. The amount of money was allegedly paid to the petitioner by the complainant while they were in relationship as is evident from the complaint that is since 2018. The amount alleged to have paid is Rs. 9, 91, 501.49 on various dates which are alleged to be found from the bank statement attached with the complainant. The question boils up even if the allegations are accepted in its entirety whether the same would attract Section 420 or not.

13. In this case the Learned Court considered the statement made on SA under Section 200 Cr.P.C where he stated before the Court about transfer of some amount from his account to the accused person and then he got married with her and after marriage she behaved with him badly. The Magistrate took cognizance on 20th July, 2022 on the basis of such statement without giving a single reasoning as to what prompted him to take the cognizance on the said

nature of statement and the allegations made in the complaint where no iota of ingredients can be found on the face of the complaint which can constitute an offence under Section 420 IPC. The learned Advocate in this regard relied upon the case of **Bhushan kumar (supra)** where it was held that the Magistrate is not bound to give reasons for issuing an order of summons under section 204 as this provision does not mandate the Magistrate to explicitly state the reasons for issuance of summons but it mandates the Magistrate to form an opinion as to whether there exists sufficient ground for summons to be issued. In the case of **U.P Pollution Control Board (supra), Kanti Bhadra Shah (supra)** also it was held by the Hon'ble Supreme Court that there is no legal requirement for trial court to pass a detailed order while issuing process, whether summons or warrant under section 204. Similarly in **Rikhab Birani & Anr. versus State of Uttar Pradesh & Anr⁹**. The Hon'ble Supreme court referred the observation made in **Thermax Limited and Others v. K.M. Johny and Others¹⁰**, which held that-

“courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the

⁹ 2025 INSC 512

¹⁰ (2011) 13 SCC 412

evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or charge sheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.”

14. In *Maksud Saiyed vs State of Gujarat & Ors.*¹¹ the Hon’ble Supreme Court held that –

*“15. This Court in **Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others [(1998) 5 SCC 749]**, held as under:*

"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

¹¹ (2008) 5 SCC 668

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."

Therefore even though the Magistrate is not required to give a detailed reasoning but the prima facie satisfaction before issuance of summons is sine qua non and hence such prima facie satisfaction must get reflected in the order while issuing process which was absolutely missing in this case. Similarly in the case as relied upon by Mr. Mit Guha Roy in **Sunil Bharti Mittal (supra)** it was held that "*a wide discretion has been given as to grant or refusal of process and it must be judicially exercised .A person ought not be dragged into court merely because a complaint has been filed .If prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction*". Therefore it is apparent that while issuing summon the Learned Magistrate failed to express that he was prima facie satisfied about the materials to constitute an offence under section 420 IPC.

15. In the case of **Rikhab Birani (supra)** the Hon'ble Supreme Court further discussed the ingredients to constitute an offence under Section 420 IPC after taking note of the various judicial pronouncement which is as follows ;

"In Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another 2024 SCC Online SC 171. This Court quoted an earlier decision in

Mohammed Ibrahim and Others v. State of Bihar and Another (2009) 8 SCC 751. Wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.”

16. In the case of **Prem Kumar Agarwal (supra)** a specific amount of loan was taken for the purpose of tissue paper business by the in laws promising good returns and partnership and a partial payment was also received and the entire facts and circumstances of the case was totally on different footing than this and hence distinguishable. The other decisions on the point that marital relationship does not negate the offence of cheating also disclose specific allegations which are absolutely missing in this case.

17. In this case the Opposite Party no. 2 did not file any complaint immediately after the marital discord cropped up but lodged the same after several proceedings were initiated against him by the petitioner including a complaint lodged against him and his family members under Section 498A IPC. It is found from the written statement filed by the husband in connection with the matrimonial suit filed for divorce by the petitioner he never uttered a single word regarding payment of such money. More so, he also filed a matrimonial suit against the present petitioner for divorce under Section 13 of Hindu Marriage Act where also he never made any such allegation against the present petitioner.

18. It is no more res integra that in exercise of power under Section 482 of the Code of Criminal Procedure this court should not hold a mini trial but it is observed and held by the Hon'ble Supreme Court that when the incident of abuse of the process of law and the court should not confined him within the written complaint itself and must look into the overall circumstances in order to prevent such process of law. It was observed by the Hon'ble Supreme Court in **Suman Mishra ors. vs the State of Uttar Pradesh Anr¹²**. Where the Hon'ble court relied on several judicial pronouncement delineating the duty of the High Court in deciding a quashing petition took note of the case of **Iqbal alias Bala and others¹³** where it was held that:-

“whenever an accused comes before the court invoking either the inherent powers under Section 482 of the code of criminal procedure or extraordinary

¹² 2025 INSC 203

¹³ (2023) 8 SCC 734

jurisdiction under Article 226 of the Constitution to get the FIR of the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the oath owes a duty to look into the FIR with care and a little more closely". It was further held that "in frivolous or vexatious proceeding the court while exercising its jurisdiction under Section 482 Cr.P.C or Article 226 of the Constitution did not restrict itself only to the stage of the case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in course of investigation".

In the said case multiple FIR when registered over a period of time and therefore it was held that where multiple FIR have been registered over a period of time, it is in the background of such circumstances the registration of multiple FIR as Jews importance, thereby attracting the issue of wreaking vengeance out of Private on personal grudge as alleged.

19. In *CBI vs. Aryan Sing and Ors (supra)* the investigation was handed over to CBI pursuant to the direction of High Court and the discharge application filed by the petitioners were dismissed by the trial court and subsequently the entire charge sheet was quashed by High court in exercise of power under Section 482 Cr.P.C and then it was held that the court exceeded in its jurisdiction but in this case in the light of above discussion and after going through the content of the complaint itself no iota of materials can be found which can fulfil the required criteria as envisaged in Section 420 IPC .

20. In the celebrated decision of **State of Haryana & Ors. vs. Bhajanlal & Ors. (Supra)** in paragraph 102 the Hon'ble Supreme Court dealt with the situation and the power under Section 482 to be exercised and that is as follows:-

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

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

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

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

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

21. The aforesaid guideline clearly establishes that where the allegations contained in the FIR, even if accepted in their entirety and taken at face value, failed to prima facie disclose the commission of any offence, and the power under Section 482 may be exercised. It is equally settled that this inherent jurisdiction can be exercised to prevent abuse of law and to secure the ends of justice. In order to attract Section 420 of IPC there must be a dishonest inducement and deception leading to the delivery of property or the amount but in the present it is alleged that husband had from time to time paid certain amount to the petitioner when they were in a relationship and the opposite party no. 2 never raised the dispute so long such relationship followed by their marriage continued peacefully. He alleged to have paid further amount time to time to her even after marriage and the aggregate of such amount accumulated to more than 9 lakhs by the time the complaint was lodged. Significantly, the complaint was instituted after the wife had already initiated several proceedings against the husband .Therefore question of inducement or deception since beginning is absolutely missing rather it clearly manifest the maliciousness in lodging such delayed complaint. More so even if any amount paid to the petitioner is not returned it attracts civil liability and can never be termed s cheating.

Conclusion

22. Hence this Court is of the view from the above discussions on the facts and law that if the proceeding pending before the court of Learned Magistrate is allowed to be continued it would be sheer abuse of the process of court and hence the proceeding should be quashed.

23. Accordingly this criminal revisional application stands allowed. The proceeding pending before the Learned Judicial Magistrate, 2nd Court at Alipore vide AC case no 1336 of 2022 is hereby quashed.

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

[CHAITALI CHATTERJEE (DAS), J.]