IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 4734 of 2023

Sushobhan Sarkar & Ors.
Vs.
State of West Bengal & Anr.

For the Petitioners	:	Mr. Sabir Ahmed, Adv. Mr. Swagata Biswas, Adv.
For the State	:	Mr. Pawan Kumar Gupta, Adv. Mr. Deepak Khetowat, Adv.
For the Opposite Party No.2	:	Mr. Sanway Banerjee, Adv.
Judgment reserved on	:	11.08.2026
Judgment delivered on	:	02.09.2026

SHAMPA DUTT (PAUL), J.:-

1. The revisional application has been preferred praying for quashing of the proceeding in G.R. Case no. 767 of 2023 arising out of Electronics Complex Police Station Case no. 126 of 2023 dated 25.07.2023 under Sections 420/406/120B of the Indian Penal Code 1860, pending before the Court of learned Additional Chief Judicial Magistrate at Bidhannagar, North 24 Parganas.

2. The petitioners case is that the petitioners no.1 and 2 herein are the Directors of C-Quel Management Services Private Limited and the petitioner nos.3 and 4 herein are the employees of the said company. The petitioners state that to enrich the organizational action, the company required assistance of legal expert for which the said company floated an advertisement seeking applications from the intending eligible persons for the post of Legal Manager. In response to such advertisement, the opposite party no.2 herein applied for the said post with his resume and disclosed that he has working experience of 15 years, out of which more that 10 years as a business entrepreneur after his B.Tech, and more than 5 years in the Law field.

3. On receiving the resume of the opposite party no.2, the opposite party no.2 was called for an interview and after the interview, the opposite party no.2 disclosed that, being an Advocate, he will have to surrender his enrolment with the Bar Association, if he is appointed in the said post of Legal Manager. Instead of that he himself has offered that he will be a Legal Retainer with the company and assist the company in his capacity and guide the company in all legal issues and research for the empowerment project of the company.

4. On negotiation, it was decided that there will be a six months provisional clause and the complainant will have to undergo induction after joining and will raise bill for monthly retainership and the retention fees was decided at Rs.35,000/- and statutory tax will be applicable. The date of joining was fixed on 02.01.2023 and the opposite party no.2 was offered the position of Legal Retainer with the company and an offer letter was issued to him and sent through e-mail of the said company.

5. On receipt of such offer letter, the opposite party no.2 instantly replied and expressed his acceptance of the said offer and, thereafter, started acting as a Legal Retainer of the said company.

6. The petitioners further states that after appraisal of the trainee when a dispute arose with regard to scope and necessity of the legal work, the opposite party no.2 himself intended to tender his resignation on 16.02.2023 and previously also there has been counseling for performance improvement of the opposite party no.2. Accordingly, the opposite party no.2 stopped visiting the office of the company. The petitioners state that finding no other alternative, the petitioner-company through a mail dated 18.02.2023 informed the opposite party no.2 that legal retainership contract has been ceased with effect from 16.02.2023.

7. The petitioners further state that since the opposite party no.2 had worked in the office of the company till 16.02.2023, phone calls were made to the opposite party no.2 for submission of his invoice for the month of February, 2023 as the petitioner-company intended to pay the remuneration of the Legal Retainer.

8. On 20.02.2023, the opposite party no.2 sent an e-mail indicating that the company does not have any lawful right to revoke an executed legal retainership agreement, without obtaining the consent of the other party and to consider the email as a legal notice for recovery of compensation for loss or damages caused due to the breach of contract and also raised a bill to the tune of Rs.20,712.

9. Subsequently the opposite party no.2 registered the present case.

10. The allegation of the de facto complainant in the written complaint is lengthy along with points of law. The de facto complainant being appointed as a legal retainer to the accused company is admitted. The relevant part of the complaint is as follows:-

> *"That after providing service as a 'Legal Retainer' for 18 days in the month of February, 2023, suddenly and surprisingly, at 18:04hrs on date 18/02/2023, the de facto complainant received an arbitrary email from cqadmin@cquel.com, with sushobhan@cquel.com and nandini@cquel.com kept in cc. The said arbitrary email contained an one-sided statement intending to cease the retainership-agreement with effect from 16/02/2023, which was anterior to the date of communication of the instant arbitrary email, without assignment of any valid reason /ground, and without any express intention of payment of fees of Rs. 20,712 Only (Rupees Twenty Thousand Seven Hundred and Twelve Only) for the services provided for the 18 days in the said month of February, 2023, along with any compensation for termination of retainership-agreement at the will of one party.*

That on 20/02/2023, at 16:04hrs, the de facto complainant sent to the Director / Managing Director of the accused person no. 1 company an email containing legal notice for ***"unfair intention of breach of contract, without assigning any reason and without having any lawful right to rescind the previously executed 'Legal Retainership' agreement, dated 28 December 2022, one-sidedly and without obtaining the consent of the other party.".***

That within 3 (three) days, from the date of the said email dated 20/02/2023, no response was received at the end of the de facto complainant from the side of the accused person. Hence, the de facto complainant kept on keeping himself available for providing the legal retainer's services to the accused person and raised consecutive 2 (two) nos of Invoices bearing respective nos SB/2/2023, dated 01/03/2023, and SB/3/2023, dated 01/04/2023, which jointly valued Rs. 70,000 Only (Rupees Seventy Thousand Only). The Invoices were sent by emails, respectively sent on 01/03/2023 at 12:20hrs and on 01/04/2023 at 14:33hrs.

That the intentional and deliberate ignorance and non-payment by the accused persons of the Invoiced amounts left the de facto complainant with no other option than to initiate *termination of the 'Legal Retainership' agreement by serving a 15 (fifteen) days notice."*

11. The de facto complainant further specified the conduct of the accused persons to prima facie make out the case for offences punishable under Sections 406/418/420/34 and Section 120B of the Indian Penal Code, 1860, as follows:-

> *"Since the month of March, 2023, the accused person/s, having converted the* ***Intellectual property of the de facto complainant to its/their own use,*** *intentionally and deliberately, despite repeated notices and reminders, failed to discharge such trust and to perform their part of promises by disbursing the claimed amount as per legal-rainership agreement.*
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> *Hence, the accused person/s committed offence punishable under Section 406 of Indian Penal Code, 1860. From the series of acts and omissions of the accused person/s and the afore-said facts it can be seen that the accused person/s dishonestly, by deceiving the de facto complainant under the guise of the 'Legal Retainership' agreement,* ***induced the de facto complainant to deliver monthly his intellectual property, which the de facto complainant would not do if he was not so deceived, to the accused person/s.*** *The acts of the accused*

person/s substantially damaged the mind and reputation of the de facto complainant.

The accused person/s thereby caused wrongful loss to the de facto complainant by not disbursing the total outstanding retainership fees of Rs. 1,05,000/-, which was a binding upon the accused person by the legal-retainership agreement, enforceable by Law.

Hence, the accused person/s committed offences punishable under Section 418 of Indian Penal Code, 1860.

***The intellectual properties, the de facto complainant entrusted / put forward to the accused person/s, were converted into valuable security,** which, in turn, caused the accused person no. 1 to earn business profit by selling those to different clients of the accused person no. 1. The accused person/s never performed their part of promises by disbursing the total invoiced amount of Rs. 1,05,000/- to the de facto complainant.*

Hence, the accused person/s committed offences punishable under Section 420 of Indian Penal Code, 1860.

Common intentions of all the accused persons were same and in furtherance to the common intentions the accused persons committed above offences of criminal breach of trust, cheating.

Hence, each of the accused persons is liable for the offences under Section 34 of Indian Penal Code, 1860.

Two or more accused persons conjointly agreed to commit the above-mentioned Illegal acts and the criminal acts were already committed.

Hence, such accused persons are parties to such criminal conspiracy punishable under Section 120B of Indian Penal Code, 1860."

12. Heard the learned counsels for the parties perused the materials in the case diary placed by the State.

13. The petitioners argue that the dispute is purely civil in nature considering that at best it is a case of breach of contract.

14. The petitioners have relied upon the following judgments:-

i. ***Hridaya Ranjan Prasad Verma vs State of Bihar, (2000) 4 SCC 168.***

ii. ***Hira Lal Hari Lal Bhagwati vs CBI, (2003) 5 SCC 257.***

iii. ***Vesa Holdings (P) Ltd. vs State of Kerala, (2015) 8 SCC 293.***

iv. ***Indian Oil Corporation vs NEPC India Ltd. (2006) 6 SCC 736.***

v. ***Trisuns Chemical Industry vs Rajesh Agarwal, (1999) 8 SCC 686.***

15. **It is further stated by the petitioner, that** the termination of the retainership arose out of performance-related concerns following a training/review session conducted with the Opposite Party No. 2 a matter squarely within the domain of a service-provider/service-recipient relationship, and not an act of criminal dishonesty.

The conduct of the Opposite Party No. 2 in issuing successive invoices and "legal notices" threatening criminal prosecution unless payment was made within stipulated timeframes, is itself indicative of the true nature of the exercise namely, the use of the **threat of criminal proceedings as a tool of coercive recovery of a disputed civil claim.**

16. The opposite party/ de facto complainant in his written notes relied upon the judgment in ***Rajeev Kourav vs Baisahab and Ors., reported in (2020) 3 SCC 317,*** wherein the Court held:-

> *"……….It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding……"*

17. The complainant has reiterated his case as made out in his written complaint.

18. The following judgment is also relied upon by the respondent:-

i. ***Harmanpreet Singh Ahluwalia & Ors. vs State of Punjab & Ors., decided on 5th May, 2009, in Criminal Appeal No. 908 of 2009.***

19. **The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant only to harass the other party.** Some of the rulings are as follows:-

a) ***M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).***

b) ***Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).***

c) ***Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).***

d) ***R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).***

e) ***Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).***

20. The petitioner also relies upon the judgment in ***Delhi Race Club (1940) Limited and Ors. vs State of Uttar Pradesb & Anr., (2024) 10 SCC 690,*** wherein the Supreme Court held:-

> ***"38.*** *In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405IPC, punishable under Section 406IPC, is committed by the accused, then in the same breath it*

cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415IPC, punishable under Section 420IPC."

21. In ***Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). .... of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022),*** the Supreme Court held:-

> *"**15.** This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another**, **(2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*
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> *"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.*
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> *23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*
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> *'7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of*

justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did

not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in* ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335*** *as under :*

*"**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 give 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 channelised 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."

***17.** The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315**."*

22. The present case falls under category 1 and 3 of ***Para 102 of Bhajan Lal (Supra).***

23. The Supreme Court in ***Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626,*** held:-

*"**18.** The only question is whether there is any criminal offence disclosed in the FIR so far as the Appellant is concerned. When the High Court passed its order dated*

5th October, 2017, Rajan Kumar (since deceased), the executant of the sale deed and the Power of Attorney holder was also an applicant before the Court. Today, there has been a change in situation, in that, criminal proceedings against Rajan Kumar have abated since Rajan Kumar is no longer alive. It is the case of the private respondent that the private respondent purchased property. In the meantime, Rajan Kumar, who is no longer alive, on the basis of a false Power of Attorney of Bela Rani, executed a sale deed in favour of Randheer Singh, i.e., the Appellant herein. There is only a vague averment "by connivance". The next part of the sentence reads "Bela Rani had no right to sell the aforesaid plot."

23. *Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. It is the case of the Private Respondents that Bela Rani has no title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since deceased). Alternatively, the Power of Attorney, in itself, was a forged document.*

24. *A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a Power of Attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the Power of Attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness."*

On noting several precedents the Court finally held:-

*"**33.** In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of*

> *how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.*
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> ***34.** The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died."*

24. From the materials in the case diary nothing transpires to make out the offences as alleged by the complainant.

25. The dispute in this case arose, when the petitioners' being dissatisfied with the work of the complainant decided to discontinue him. The dispute thus relates to termination of service for which he was engaged.

26. The said dispute in no manner even prima facie constitute the offences alleged.

27. The contents in the written complaint also show a dispute only as to termination of services, which the complainant was connected with for less than two months.

28. Thus, there being no prima facie materials on record against the petitioners in respect of the offences alleged, the proceedings in G.R. Case no. 767 of 2023 arising out of Electronics Complex Police Station Case no. 126 of 2023 dated 25.07.2023 under Sections 420/406/120B of the Indian Penal Code 1860, pending before the Court of learned Additional Chief Judicial Magistrate at Bidhannagar, North 24 Parganas **are liable to be quashed.**

29. **The revisional application being CRR 4734 of 2023 is allowed.**

30. The proceeding in G.R. Case no. 767 of 2023 arising out of Electronics Complex Police Station Case no. 126 of 2023 dated 25.07.2023 under Sections 420/406/120B of the Indian Penal Code 1860, pending before the Court of learned Additional Chief Judicial Magistrate at Bidhannagar, North 24 Parganas, **is hereby quashed in respect of the petitioners namely Sushobhan Sarkar, Nandini Sarkar, Abhijit Bhattacharya and Poulomi Kumari.**

31. All connected applications, if any, stand disposed of.

32. Interim order, if any, stands vacated.

33. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

34. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)