

(2025) 10 OHC CK 0028

Orissa HC

Case No: CRLMC No. 3086 Of 2015

Nabrun Patnaik

APPELLANT

Vs

State Of Odisha &amp; Another

RESPONDENT

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**Date of Decision:** Oct. 24, 2025**Acts Referred:**

- Constitution Of India, 1950 &mdash; Article 14
- Indian Penal Code, 1860 &mdash; Section 120B, 323, 384, 406, 420, 423, 465, 467, 468
- Code Of Criminal Procedure 1973 &mdash; Section 155(2), 156(1), 200, 202, 482

**Hon'ble Judges:** Chittaranjan Dash, J**Bench:** Single Bench**Advocate:** S.K. Sarangi, R.B. Dash**Final Decision:** Disposed Of

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**Judgement**

Chittaranjan Dash, J

1. Heard learned counsels for both the Parties.

2. By means of this application the Petitioner seeks to quash the order dated 09.03.2015 passed by the learned S.D.J.M., Bhubaneswar in ICC No.3797 of 2014.

3. The background facts of the case are that both the Petitioner and the Opposite Party No.2 engaged in a business tie up pursuant to a written agreement with several terms and conditions binding upon both the Parties. It is alleged that the Petitioner, being the Managing Director of M/s. Orex Minerals Ltd. entered into an agreement with M/s. Minex India, of which the Opp. Party is a Managing Partner, for supply of 7,800 Metric ton of iron ore fines for export purpose on 05.12.2011. In order to secure the goods, the Petitioner had given two security cheques of Rs.1,21,68,000/- and Rs.82,37,450/-. The Petitioner supplied the aforesaid material in two consignments. First consignment was for 4,096.43 Metric ton, of which payment was received for 2,669.67 Metric ton leaving a balance of 1,426.76 Metric ton. Another lot of 2879.97 Metric ton was supplied to the Opp. Party from K.S. Trading on the direction of the Petitioner for which payment was received by K.S.Trading directly from Opp. Party. The Opp. Party received 6976.40 Metric ton of iron ore fines till 14.03.2012. Out of the total quantity supplied, the Petitioner was to get Rs.39,36,866/- from the Opp. Party, which the Opp. Party did not settle till date. This material was subsequently sold by the Opp. Party to M/S Metal Impex/ Orecast, whose office is at - N-5 /395, IRC

Village, Nayapalli, Bhubaneswar Odisha. Opp. Party received the entire sale proceeds from said purchaser but avoided and did to pay the balance amount of Rs 39,36,866.00/- to the petitioner. Despite regular follow-up with Opp. Party, he did not respond nor acknowledged any communication for which Petitioner was forced to file a criminal case before the Bhawanipur Police station, Haldia, West Bengal vide P.S. Case No. 148/12 dated 14/07/12 under section 420 IPC corresponding to G.R No 840/2012 is pending in the court of Additional Chief Judicial Magistrate, Haldia. The Opp. Party appeared and got released on bail. It is further case of the Petitioner that the Petitioner filed a civil suit before the High Court of Calcutta registered as G.A. 3729 of 2014. While the matter stood thus, the Opposite Party No.2 filed a complaint before the learned S.D.J.M., Bhubaneswar alleging against the Petitioner to have committed fraud and cheating. The learned Magistrate having proceeded in compliance with the provisions under Section 200 and 202 Cr.P.C., took cognizance of offence under Section 420/465 of the IPC and issued process against the Petitioner directing his appearance in the Court impugned herein.

4. Mr. Santanu Kumar Sarangi, learned Senior Advocate appearing for the Petitioner submitted that the matter in dispute, the cause of action whereof arises entirely within the jurisdiction of the state of West Bengal and further the Petitioner is bound by the terms of the contract entered between them under Annexure-4, wherein Article 14 of the agreement stipulates that in the event of any dispute of difference arises between the Parties to the agreement relating to or arising out of the agreement including the implementation, execution, interpretation, rectification, validity, enforceability, termination or recession thereof including the rights, obligations or liabilities of the Parties thereto shall be adjudicated and determined by arbitration and the very fact that the Petitioner having supplied the material in terms of the agreement, the non-performance of the part of the obligation under the contract cannot attract any criminal liability. The dispute, if any, between the Parties, being of civil nature, the present complaint is not maintainable. Mr. Sarangi, learned Senior Advocate, also relied upon the decision in the matter of Hiralal Harilal Bhagabati vs. DBI, New Delhi reported in (2003) 25 OCR (SC) 770, Ajay Mitra vs. State of M.P & Others reported in (2003) 25 OCR (SC) 226.

5. The Opposite Party No.2, though initially represented by a counsel, subsequently chose not to be represented. Despite due notice, none appeared on their behalf, and accordingly, the matter was heard on merits.

6. Admittedly, the Petitioner had approached the High Court at Calcutta in its Ordinary Original Civil Jurisdiction by filing a suit registered as C.S. No. 57 of 2014. The subject matter of the said suit is substantially the same as that of the complaint filed by the Petitioner before the learned S.D.J.M. The allegations in the complaint pertain to the course of business transactions between the Complainant's firm and the Petitioner, who had entered into a contract for the sale and purchase of iron ore fines. It is alleged that the said contract was breached, as the Petitioner, being under an obligation to supply materials to the Complainant and/or to refund the amount received by his company in the event of non-supply, failed to do so.

7. It is an admitted fact that the agreement entered into between the parties conferred jurisdiction upon the Courts at Bhubaneswar; however, all disputes arising out of the said contract were subject to arbitration. Even otherwise, the offences for which cognizance has been taken by the learned Trial Court, namely under Sections 420 and 465 of the Indian Penal Code, cannot prima facie be said to have been made out, as the crucial question is whether the Petitioner possessed a fraudulent or dishonest intention from the inception to cheat the Complainant's firm.

8. It is well settled by a catena of decisions that, to establish the offence of cheating, the Complainant must demonstrate that the accused had fraudulent or dishonest intention at the time of making the promise or representation. Mere failure to honour a promise subsequently cannot, by itself, lead to the presumption of such culpable intention at the inception of the transaction.

9. In the matter of Usha Chakraborty & Anr. vs. State of West Bengal and Anr., reported in (2023) 15 SCC 135, the Hon'ble Supreme Court has held as follows:-

“8. In *Paramjeet Batra v. State of Uttarakhand*, this Court held: (SCC p. 676, para 12)

‘12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.’

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10. In *Kapil Aggarwal v. Sanjay Sharma*, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

11. In the decision in *State of Haryana v. Bhajan Lal*, a two-Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under: (SCC pp. 378-79, para 102)

‘102.... (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 Act concerned (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.

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20. As noticed hereinbefore, the respondent alleged commission of offences under Sections 323, 384, 406, 423, 467, 468, 420 and 120-B IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 468,

420 and 120-B IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences.

21. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants b and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in Paramjeet Batra, the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.

22. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion.

23. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 CrPC to quash the FIR registered based on the direction of the Magistrate Court in the aforestated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of court and also in miscarriage of justice.'

10. From the materials on record, it appears that the Petitioner's firm, in compliance with the terms of the agreement, had supplied a substantial portion of the contracted material to the Complainant's company but failed to deliver the remaining quantity. Such subsequent failure, even if true, would at best constitute a breach of contract and does not attract the ingredients of the offence under Section 420 IPC; the same analogy applies in respect of the alleged offence under Section 465 IPC. Therefore, the dispute being essentially civil in nature could not have been given the colour of criminality, and accordingly, the cognizance taken by the learned Trial Court does not satisfy the requirements of law.

11. Having regard to some of the documents referred to by the Complainant Opposite Party-2 with regard to the challan may be taken separately by the Complainant, if he so desires which might give rise to a criminality. However, the same being not the matter of dispute herein, this Court refrains from giving any specific observation to that effect.

12. As a result, the order dated 09.03.2015 passed by the learned S.D.J.M., Bhubaneswar in ICC No.3797 of 2014 stands quashed. The CRLMC is disposed of accordingly as allowed.