

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1522 of 2006

**Sri Gyaneshwar Prasad Agarwal
-Vs-
The State of West Bengal & Anr.**

For the Petitioner : Mr. Sounak Mondal
Mr. Neelesh Chowdhury
Ms. Anuradha Podder

For the Opposite Party No.2 : Mr. Rajmohan Chattoraj
Mr. Suman Basu

For the State : Mr. Joydeep Roy

Judgment on : 22.06.2026

Ananya Bandyopadhyay, J.:-

1. The revisional application has been instituted assailing the order dated 4th April, 2006 passed by the Learned Chief Metropolitan Magistrate, Calcutta in connection with Hare Street P.S. Case No. 691 dated 15th October, 2001, registered under Sections 406/420 read with Section 120B of the Indian Penal Code. The petitioner seeks judicial intervention against the direction for reinvestigation issued by the Learned Magistrate, contending that the impugned order traverses beyond the contours of statutory authority and has been rendered in disregard of settled principles governing criminal process.

2. The genesis of the prosecution lay in a complaint lodged by the de facto complainant under Section 156(3) of the Code of Criminal Procedure alleging that the petitioner and certain others had induced the complainant to enter into a transaction for purchase of a parcel of land situated at Mondal Ghati on V.I.P. Road, Kolkata. According to the complaint, representations were made regarding the petitioner's title and possession over the property, pursuant where to a substantial sum aggregating Rs.18,00,000/- was paid as advance consideration. The complainant subsequently claimed to have discovered that the land had earlier been acquired by the State for public purposes and, alleging deception, sought initiation of criminal proceedings.
3. The petitioner, however, asserts that the allegations constitute a distorted portrayal of a commercial transaction and are bereft of the essential attributes of criminality. It is the petitioner's categorical stand that the transaction was conducted openly, that possession of the land had been delivered to the complainant, and that the complainant had acknowledged the same. Correspondence exchanged between the parties, according to the petitioner, reflected continuous engagement regarding the transaction and demonstrated that the dispute pertained solely to contractual obligations and reciprocal claims arising therefrom.
4. The petitioner further relies upon communications addressed to the complainant and to the investigating authorities to demonstrate that every allegation of deceit had been expressly refuted at the earliest opportunity. Particular emphasis has been placed upon documents revealing that the parties had resorted to arbitration and that original records concerning the

transaction remained before the arbitrator. Such circumstances, according to the petitioner, furnish compelling indication that the controversy possessed a distinctly civil complexion rather than the character of an offence attracting penal consequences.

5. A significant facet of the petitioner's challenge concerns the course adopted during investigation. Following registration of the First Information Report, investigation culminated in submission of Final Report No.49 dated 18th February, 2002 wherein the Investigating Authority opined that no ingredients of offences under Sections 406, 420 or 120B of the Indian Penal Code were disclosed and that the dispute was essentially civil in nature. The Investigating Officer accordingly sought closure of the proceedings.
6. The petitioner asserts that after submission of the Final Report, notice was issued to the *de facto* complainant. Despite repeated opportunities extending over a considerable span of time, the complainant failed to file any substantive protest petition. Repeated prayers for extension of time were entertained over several dates. Ultimately, after a prolonged interval from the filing of the Final Report, an application was tendered seeking further investigation by another investigating agency. The petitioner contends that the said application was neither supported by cogent materials nor accompanied by any satisfactory explanation accounting for the extraordinary delay.
7. According to the petitioner, the Learned Magistrate, while passing the impugned order dated 4th April, 2006, directed reinvestigation in a mechanical manner without recording reasons, without analysing the

materials collected during investigation, and without addressing the conclusions contained in the Final Report. Such a direction, it is argued, stands at variance with the scheme of the Code of Criminal Procedure and the judicial precedents governing the powers exercisable by a Magistrate upon receipt of a police report.

8. The petitioner further contends that the complaint, even if accepted in its entirety, reveals no element of fraudulent inducement at the inception of the transaction, which constitutes the foundational requirement for an offence of cheating. The allegations, at their highest, disclose a dispute arising from a failed commercial arrangement involving immovable property. Criminal proceedings, it is submitted, have been invoked as an instrument of pressure to secure advantage in a private transaction and to convert a civil disagreement into a penal proceeding.
9. It is thus the petitioner's case that the impugned order directing reinvestigation is cryptic, devoid of analytical reasoning, inconsistent with established legal doctrine, and productive of manifest prejudice. The continuance of such proceedings, according to the petitioner, would transform the criminal process into a vehicle of commercial coercion rather than an instrument for vindication of genuine criminal wrongs. On such premises, the petitioner seeks setting aside of the order dated 4th April, 2006 and consequential reliefs in exercise of the revisional jurisdiction of this Court.
10. The Learned Advocate appearing for the petitioner assailed the impugned order dated 4th April, 2006 as a jurisdictional transgression clothed in

judicial form. It was submitted that the Learned Chief Metropolitan Magistrate, Calcutta, while dealing with a police report submitted under Section 173(2) of the Code of Criminal Procedure, ventured beyond the boundaries prescribed by statute in directing reinvestigation of the case. According to the petitioner, such a course finds no sanction within the legislative framework governing criminal investigation and therefore renders the impugned order legally infirm.

11. The Learned Counsel traced the factual backdrop of the dispute to a commercial transaction concerning a parcel of land situated at Mondal Ghati, V.I.P. Road, Kolkata. The complainant had, after examining title documents and satisfying itself regarding the transaction, agreed to purchase the property for a consideration of Rs.25,60,548.50/- and had paid an aggregate sum of Rs.18 lakhs by way of cheques. The subsequent discovery that the property had earlier been subjected to acquisition proceedings gave rise, at its highest, to a dispute concerning reciprocal rights and obligations flowing from a contractual arrangement. Such circumstances, it was contended, did not furnish the foundational elements necessary to attract the offences punishable under Sections 406, 420 or 120B of the Indian Penal Code.

12. It was argued that the materials collected during investigation revealed no circumstance indicative of fraudulent inducement at the inception of the transaction. The essence of the accusation rested upon events which surfaced long after the agreement had been entered into. The narrative projected by the complainant therefore disclosed a discord of a civil

complexion rather than a criminal design conceived from the very beginning. Criminal prosecution, it was submitted, had been invoked as an instrument of pressure in aid of a property dispute and not as a legitimate response to a cognizable offence.

13. The Learned Counsel further submitted that the Investigating Agency, after conducting a comprehensive inquiry, submitted a Final Report dated 18th December, 2002 opining that no criminal offence was disclosed and that the dispute was essentially civil in nature. Such conclusion, according to the petitioner, was reached upon scrutiny of the documentary materials and surrounding circumstances. Notice was thereafter issued to the *de facto* complainant, affording an opportunity to challenge the closure report.
14. A considerable emphasis was placed upon the chronology that followed. Despite repeated opportunities extending over several years, the *de facto* complainant failed to place any substantive protest petition before the Learned Magistrate. Applications seeking adjournments and enlargement of time succeeded one another without any meaningful challenge to the findings recorded by the Investigating Agency. The *Naraji* petition ultimately surfaced after an extensive lapse of time from the date of submission of the Final Report and was accompanied by a prayer for further inquiry into matters that had already received investigative scrutiny.
15. The Learned Counsel submitted that the impugned order directing reinvestigation was bereft of analytical reasoning. The Learned Magistrate neither examined the evidentiary materials gathered during investigation nor assigned reasons demonstrating dissatisfaction with the conclusions

recorded in the Final Report. The order, according to the petitioner, consisted merely of a direction for reinvestigation without any discussion of the factual or legal basis warranting such a course.

16. The petitioner further contended that the expression "reinvestigation" employed in the impugned order possessed a distinct legal significance and could not be treated as synonymous with "further investigation". Drawing attention to Sections 156 and 173 of the Code of Criminal Procedure, the Learned Counsel submitted that the legislative scheme contemplates continuation of investigation through the mechanism of further investigation under Section 173(8), enabling submission of supplementary reports upon discovery of additional evidence. Such provision, however, does not vest a Magistrate with authority to erase an earlier investigation and command a fresh investigative exercise commencing from the beginning.
17. Reliance was placed upon the pronouncement of the Hon'ble Supreme Court in *Vinay Tyagi v. Irshad Ali* 2013 (5) SCC 762, wherein the distinction between initial investigation, further investigation and fresh or *de novo* investigation received authoritative exposition. Learned counsel submitted that the power to direct a fresh investigation or reinvestigation resides within a far narrower constitutional domain and cannot be exercised by a Magistrate dealing with a police report. Consequently, the order dated 4th April, 2006 was said to suffer from a defect striking at its very jurisdictional foundation.
18. Addressing the attempt made on behalf of the complainant to construe the word "reinvestigation" as "further investigation", the Learned Counsel

submitted that judicial orders must be interpreted according to the language consciously employed therein. An order containing a direction that the court itself lacked authority to issue cannot subsequently be salvaged by linguistic reconstruction. Such an exercise, it was argued, would amount to substituting the order actually passed with one that was never rendered.

19. With regard to C.R.A.N. No. 2 of 2024 seeking action under Section 340 of the Code of Criminal Procedure, the Learned Counsel submitted that the application had been instituted after an extraordinary lapse of nearly eighteen years. The allegations of perjury rested principally upon assertions concerning arbitral proceedings and certain correspondence exchanged between the parties. The petitioner maintained that the order granting bail on 5th December, 2001 had attained finality and had never been questioned by the complainant. Any attempt to reopen issues connected with that order after more than two decades was portrayed as legally impermissible.

20. The Learned Counsel further submitted that documentary records, including postal acknowledgements, demonstrated that correspondence relied upon by the petitioner had indeed been dispatched and communicated. The accusation of fabrication therefore lacked factual support. Even otherwise, the conditions precedent for invocation of Section 340 of the Code of Criminal Procedure were conspicuously absent. Reliance was placed upon the decisions in *Nirmaljit Singh Hoon v. State of West Bengal 1973 (3) SCC 753* and *Iqbal Singh Marwah v. Meenakshi Marwah 2005 (4) SCC 370* to contend that proceedings for perjury are not to be initiated upon every allegation of factual inconsistency but only where the interests of justice

demand such intervention and where the statutory prerequisites stand satisfied.

21. The Learned Advocate thus urged that the impugned order directing reinvestigation constituted an impermissible exercise of jurisdiction, that the allegations embedded in the complaint disclosed no criminal offence, that the Final Report rightly characterised the dispute as civil in nature, and that the subsequent proceedings initiated by the complainant reflected a sustained endeavour to convert a contractual disagreement into a criminal prosecution. Upon such premises, the petitioner prayed for annulment of the order dated 4th April, 2006 and dismissal of the ancillary proceedings founded upon Section 340 of the Code of Criminal Procedure.
22. The Learned Advocate appearing for the *de facto* complainant/Opposite Party No. 2 stoutly resisted the revisional challenge and contended that the present proceeding is founded upon a calculated design of deception which had its genesis in the very inception of the transaction. According to the complainant, the petitioner and the other accused persons projected themselves as persons possessed of a clear and marketable title over a substantial parcel of land comprised in Dag No. 462 at Mondal Ghati, V.I.P. Road, Kolkata, and thereby induced the complainant to part with a sum of Rs.18,00,000/- towards the agreed consideration of Rs.25,60,548.50/-.
23. The Learned Counsel submitted that the subsequent revelation regarding acquisition of the land by the Land Acquisition Collector, Government of West Bengal, did not constitute a later development affecting contractual performance, but rather exposed a material fact which had been consciously

withheld from the complainant at the time the transaction was negotiated and the consideration received. Such suppression, it was argued, strikes at the root of the transaction and furnishes compelling evidence of a fraudulent intent accompanying the representation from its very commencement.

24. It was contended that despite repeated requests, the accused persons neither executed the conveyance in favour of the complainant nor restored the monies received from him. The complainant was therefore left with no recourse save invocation of the criminal process. Pursuant to an application under Section 156(3) of the Code of Criminal Procedure, the Learned Chief Metropolitan Magistrate found sufficient grounds warranting investigation and directed registration of a criminal case, culminating in Hare Street Police Station Case No. 691 of 2001 under Sections 406, 420 and 120B of the Indian Penal Code.

25. The Learned Counsel further submitted that the petitioner had secured bail upon a representation that arbitral proceedings concerning the dispute were pending before Sri J.M. Jhunjhunwala of P.D. Hiumatsingka and Co., Solicitors & Advocates. According to the complainant, no such arbitral proceeding ever existed. The plea of arbitration, it was argued, constituted a fabricated narrative consistently advanced before various forums with a view to obtaining judicial advantage and forestalling criminal prosecution. The complainant alleged that such conduct amounted not merely to a misstatement of fact but to a deliberate distortion of the judicial record, thereby impairing the sanctity of court proceedings.

26. The Learned Advocate criticized the investigation conducted by the Kolkata Police and submitted that the Investigating Agency failed to discharge its statutory obligation with the degree of diligence demanded by the circumstances. Attention was drawn to materials indicating that the investigating officer himself had considered verification of the alleged arbitral proceeding necessary. Yet, according to the complainant, no meaningful inquiry was undertaken in that regard. The Final Report characterizing the dispute as civil in nature was therefore assailed as a conclusion arrived at without adequate scrutiny of the foundational allegations relating to fraudulent inducement and concealment of material facts.
27. It was urged that the materials available on record unmistakably disclose the essential ingredients of cheating and criminal breach of trust. Learned counsel emphasised that the complainant had been persuaded to part with a substantial sum of money while the accused were fully aware of circumstances affecting the title and status of the property. The existence of *mens rea*, according to the complainant, stood embedded within the very architecture of the transaction and distinguished the matter from an ordinary commercial dispute.
28. With regard to the impugned order dated 4th April, 2006, the Learned Counsel submitted that the Learned Magistrate acted upon a detailed *Naraji* petition and examined the case diary before directing reinvestigation. The order, it was argued, reflected judicial application of mind to the deficiencies apparent in the investigation and to the grievances articulated by the complainant. The absence of an elaborate discussion on merits did not

detract from the legality of the order, particularly at a stage where the court was concerned with the propriety of the investigative process rather than adjudication of guilt.

29. The Learned Counsel further contended that excessive emphasis upon the terminology employed by the Learned Magistrate would elevate form above substance. Even assuming that the expression "reinvestigation" had been employed, the paramount consideration remained the ascertainment of truth and the correction of investigative deficiencies. The complainant maintained that a purely semantic challenge ought not to eclipse the substantive quest for justice, especially where serious allegations of fraud and deception remained inadequately examined.

30. Invoking the plenary powers of this Court under Articles 226 and 227 of the Constitution of India, together with its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, learned counsel submitted that this Court possesses ample authority to mould relief in a manner conducive to the administration of justice. In that perspective, it was suggested that even if the nomenclature employed in the impugned order invited debate, the order could be sustained by construing it as a direction for further investigation so that the factual controversies receive a comprehensive and lawful examination.

31. The Learned Advocate also urged that the complainant has endured a prolonged quest for redress spanning more than two decades and that procedural objections ought not to eclipse the substantive merits of the allegations. According to the complainant, the passage of time has operated

to his detriment, while the accused have continued to derive advantage from interlocutory orders and procedural complexities.

32. In support of the ancillary application under Section 340 of the Code of Criminal Procedure, learned counsel submitted that the representations concerning the alleged arbitral proceedings constituted a deliberate attempt to mislead judicial forums and thereby warranted inquiry into offences affecting the administration of justice. Reliance was placed upon judicial precedents emphasising the obligation of litigants to approach courts with complete candour and the necessity of preserving the purity of judicial proceedings from falsehood and manipulation.

33. The Learned Advocate accordingly maintained that the impugned order dated 4th April, 2006 suffers from no legal infirmity warranting interference in revisional jurisdiction; that the allegations reveal a carefully orchestrated scheme of deception rather than a mere civil disagreement; that the investigative exercise culminating in the Final Report left vital aspects of the matter unexplored; and that the interests of justice demand a fresh and comprehensive examination of the facts. On such premises, dismissal of the revisional application and continuation of investigative proceedings were earnestly sought.

34. The narrative emerging from the records, the submissions advanced on behalf of the respective parties, the materials collected during investigation and the legal principles governing the field, invite scrutiny of a question that transcends the fortunes of the litigants and touches the delicate frontier separating a civil dispute from criminal prosecution.

35. The genesis of the controversy lies in a transaction concerning immovable property. The complainant entered into negotiations with the petitioner and others for acquisition of a parcel of land upon examination of title deeds and other supporting documents. Considerable sums were paid pursuant to the agreement between the parties. Thereafter, disputes surfaced regarding the status of the property and the rights flowing from the transaction. What followed was a prolonged contest spanning more than two decades, traversing investigative proceedings, revisional challenges, applications seeking further inquiry and collateral proceedings invoking Section 340 of the Code of Criminal Procedure.
36. The complaint, when examined in its entirety and accepted at its highest, reveals a dispute rooted in reciprocal contractual obligations arising from a property transaction. The allegations do not disclose that at the inception of the arrangement the accused persons possessed a fraudulent design intended to induce the complainant to part with money by means of deception. The distinction is neither academic nor technical. It constitutes the very foundation upon which criminal liability under Section 420 of the Indian Penal Code rests.
37. For an offence of cheating to emerge, dishonest intention must accompany the representation at the very moment it is made. A subsequent failure to perform contractual obligations, a disagreement concerning title, or a dispute regarding completion of a transaction does not, by itself, metamorphose a civil disagreement into a criminal offence. The complaint

before the Court falls short of disclosing those indispensable features which would justify a criminal trial for cheating.

38. The allegations under Section 406 of the Indian Penal Code fare no better. Criminal breach of trust postulates entrustment coupled with dishonest misappropriation or conversion of entrusted property. The records do not reveal any entrustment in the legal sense contemplated by the statute. The monies exchanged between the parties formed part of a commercial arrangement governed by contractual rights and obligations. The foundational ingredient of entrustment, upon which the statutory provision rests, remains absent.

39. The accusation under Section 120B of the Indian Penal Code is equally fragile. A charge of criminal conspiracy cannot survive in abstraction. It must rest upon materials indicative of an agreement to commit an illegal act or a legal act by illegal means. Beyond broad assertions and inferential allegations, the records furnish no material capable of disclosing a concerted criminal design amongst the accused persons. The charge of conspiracy therefore lacks an evidentiary foundation.

40. An aspect of considerable significance is the existence of the arbitral mechanism contemplated between the parties. Commercial parties who consciously elect a contractual forum for resolution of disputes acknowledge, by such election, the predominance of private rights and obligations governing their relationship. The materials placed before this Court indicate that the disputes arising from the transaction had already entered the domain of arbitral resolution. Such circumstance reinforces the essentially

civil complexion of the controversy. Criminal law cannot be permitted to eclipse contractual remedies merely because one party finds the civil process less advantageous than penal prosecution.

41. Equally important is the legal consequence flowing from the Final Report submitted by the Investigating Agency. The Investigating Authority, after inquiry, formed an opinion that the dispute bore a civil character and that the ingredients of the offences alleged were not disclosed. Upon receipt of such report, the Learned Magistrate undoubtedly possessed the authority to accept the report, reject the report, take cognizance upon the materials available, or direct further investigation where circumstances warranted such a course. Such authority, however, must operate within the confines delineated by the Code.
42. The impugned order dated 4th April, 2006 directed "reinvestigation" of the case. The distinction between further investigation and reinvestigation is neither semantic nor ornamental. It bears direct relation to jurisdiction. Further investigation supplements an existing investigation. Reinvestigation or fresh investigation supplants the earlier exercise and commences afresh. The statutory framework embodied in Sections 156 and 173 of the Code preserves the former in appropriate circumstances but does not confer upon a Magistrate authority to direct the latter.
43. The exposition of law rendered by the Hon'ble Supreme Court in *Vinay Tyagi v. Irshad Ali* (supra) leaves little room for uncertainty on this aspect. A Magistrate may, in a suitable case, require further investigation. A direction for fresh investigation or reinvestigation belongs to a different jurisdictional

sphere. The impugned order therefore suffers from a defect striking at the root of the authority exercised.

44. The contention advanced on behalf of the complainant that the expression "reinvestigation" should be read as "further investigation" cannot be accepted. Judicial orders derive meaning from the language consciously employed therein. A jurisdictional defect cannot be cured through subsequent linguistic reconstruction. The legality of an order must be tested on the basis of what the Court has actually directed and not on the basis of what another court may speculate it intended to direct.
45. The chronology of events furnishes an additional circumstance of relevance. The Final Report was submitted in the year 2002. Repeated opportunities were afforded to the complainant. The *Naraji* petition emerged after substantial passage of time. The proceedings thereafter travelled through successive stages while the foundational nature of the dispute remained unchanged. The long passage of time has not yielded any material capable of transforming the civil character of the controversy into a prosecutable criminal offence.
46. Courts exercising criminal jurisdiction remain vigilant against attempts to employ penal provisions as instruments of leverage in commercial disputes. Criminal law carries consequences affecting liberty, reputation and social standing. Invocation of such jurisdiction in matters essentially arising from contractual discord risks converting the criminal process into a coercive mechanism for recovery of money or enforcement of private claims. Such

deployment of criminal machinery stands at variance with the purpose for which penal law exists.

47. Viewed cumulatively, the complaint, the investigative materials, the contractual relationship between the parties, the arbitral features of the dispute, the absence of the statutory ingredients constituting offences under Sections 406, 420 and 120B of the Indian Penal Code and the jurisdictional infirmity embedded in the impugned order, persuade this Court that continuation of the criminal proceeding would serve no legitimate prosecutorial purpose. Rather, it would subject the parties to a criminal trial in a matter where the gravamen of the controversy lies within the realm of civil adjudication.
48. Permitting the prosecution to proceed in such circumstances would amount to a misuse of the criminal process and would occasion a manifest departure from the principles that govern fair administration of justice.
49. Accordingly, the revisional application succeeds. The order dated 4th April, 2006 passed by the Learned Chief Metropolitan Magistrate, Calcutta directing reinvestigation in Hare Street Police Station Case No. 691 dated 15th October, 2001 is set aside.
50. The records reveal that the controversy between the parties arose from a transaction concerning immovable property, the terms whereof were negotiated over a period of time and culminated in payment of substantial consideration by the complainant. The dispute thereafter centred around the status of the property, the rights flowing from the transaction and the

consequences arising from the acquisition proceedings allegedly affecting the land in question.

51. The pivotal issue before this Court is whether the allegations, even if accepted in their entirety, disclose the commission of offences punishable under Sections 406, 420 and 120B of the Indian Penal Code so as to justify continuation of criminal prosecution.
52. The offence of cheating punishable under Section 420 of the Indian Penal Code is founded upon deception leading to delivery of property. The statutory provision is not attracted merely because a contractual promise remains unfulfilled or because a transaction subsequently encounters obstacles. The law insists upon the presence of a dishonest intention at the very inception of the transaction. Such intention must precede or accompany the representation that induced the aggrieved party to part with property.
53. The distinction is fundamental. Every breach of contract may generate civil consequences; every breach of contract does not constitute cheating. Criminal culpability emerges only where the representation itself is tainted by fraud from its inception. The complaint and the materials collected during investigation do not disclose circumstances from which such initial fraudulent intention may be legitimately inferred. The allegations reveal that negotiations were conducted, title documents were produced, consideration was settled, payments were made through banking channels and the relationship between the parties continued over a considerable period. Such circumstances are far more consistent with a commercial transaction that

subsequently descended into controversy than with a preconceived design to deceive.

54. The allegations also fail to satisfy the requirements of Section 406 of the Indian Penal Code. Criminal breach of trust rests upon the existence of entrustment followed by dishonest misappropriation or conversion. Entrustment constitutes the juridical foundation of the offence. The monies paid by the complainant were not entrusted to the accused for safe custody or for administration on behalf of the complainant. They formed part of a contractual arrangement concerning sale of immovable property. The relationship between the parties was that of contracting parties pursuing reciprocal obligations and not one involving fiduciary entrustment. The essential statutory element upon which Section 406 is erected therefore remains absent.

55. The accusation under Section 120B of the Indian Penal Code also lacks substantive foundation. Criminal conspiracy is not established through conjecture or suspicion. The offence requires material demonstrating an agreement between two or more persons to commit an illegal act or a lawful act through illegal means. The complaint contains assertions regarding participation of several persons in the transaction. Such participation, without more, cannot furnish proof of a criminal conspiracy. No material has been brought on record indicating a meeting of minds directed towards commission of an offence. The charge consequently remains bereft of the factual substratum required by law.

56. A circumstance of substantial significance is the existence of the arbitral mechanism governing disputes between the parties. Commercial entities frequently incorporate arbitration clauses to secure resolution of disputes through a mutually chosen forum. Such a clause reflects the intention of the parties that disagreements arising from the transaction should ordinarily be adjudicated within the framework of private law. Although the existence of an arbitration agreement does not create an absolute bar against criminal prosecution where genuine criminality is disclosed, it nevertheless assumes considerable significance while determining the true character of the dispute.

57. The materials on record demonstrate that the parties themselves contemplated recourse to arbitration. The controversy regarding title, consideration, performance of contractual obligations and financial consequences arising therefrom belongs essentially to the realm of civil adjudication. Invocation of criminal law in such circumstances demands a heightened degree of judicial scrutiny lest contractual disputes acquire penal dimensions without the statutory ingredients of criminal offences being present. The Court must also examine the legality of the impugned order directing reinvestigation.

58. The scheme of Chapter XII of the Code of Criminal Procedure reveals a carefully balanced distribution of powers between the investigating agency and the Magistracy. Section 156 empowers investigation by the police. Upon completion of investigation, a report is submitted under Section 173(2).

Thereafter, Section 173(8) preserves the authority of the investigating agency to undertake further investigation if fresh material surfaces.

59. The expression employed by Parliament is "further investigation". Such investigation supplements the earlier inquiry and culminates in a supplementary report. The legislative text does not confer authority upon a Magistrate to direct a fresh investigation wiping out the earlier exercise or to command reinvestigation of the case.
60. The distinction between "further investigation" and "reinvestigation" has received authoritative exposition in *Vinay Tyagi versus Irshad Ali* (supra). Further investigation continues the existing process; reinvestigation commences afresh. The former may be directed in circumstances recognised by law. The latter belongs to a jurisdiction exercised in exceptional situations by constitutional courts and not by a Magistrate acting under the Code.
61. The impugned order expressly directs "reinvestigation". The expression appears repeatedly and forms the operative foundation of the order. Jurisdiction cannot be expanded through interpretative reconstruction. A court cannot be invited to substitute a legally permissible expression for the one consciously employed by the authority whose order is under challenge. The validity of a judicial order must be assessed on the language actually used and the jurisdiction actually exercised.
62. The Final Report submitted by the Investigating Agency concluded that the controversy was civil in character and that the ingredients of the alleged offences were absent. Upon receipt of such report, the Learned Magistrate possessed several recognised courses of action. The Learned Magistrate

could accept the report, disagree with the report and take cognizance on the materials available, or direct further investigation if circumstances justified such a course. The Code, however, did not empower the Learned Magistrate to direct reinvestigation.

63. The impugned order also reveals a conspicuous absence of reasons explaining why the conclusions reached by the Investigating Agency were erroneous or why a fresh investigative exercise had become necessary. Judicial discretion derives legitimacy from reasons. Reasons constitute the visible manifestation of the decision-making process and provide assurance that discretion has been exercised upon legal principles rather than subjective inclination.

64. The cumulative effect of the foregoing circumstances leads this Court to conclude that the dispute bears the unmistakable features of a civil controversy arising from a commercial transaction. The constituent elements of offences under Sections 406, 420 and 120B of the Indian Penal Code remain absent. The impugned direction for reinvestigation traverses beyond the jurisdiction vested in the Learned Magistrate by the Code of Criminal Procedure. Continuation of the prosecution in such circumstances would neither advance the cause of criminal justice nor vindicate any recognised penal interest. On the contrary, it would permit the criminal process to operate as an instrument for exerting pressure in a dispute that properly belongs to the civil forum chosen by the parties themselves.

65. The Court cannot remain indifferent where the coercive machinery of criminal law is invoked in a sphere occupied predominantly by contractual

rights and obligations. Preservation of the distinction between civil liability and criminal culpability is indispensable to the integrity of both systems. Failure to maintain that distinction would erode the boundaries consciously drawn by the legislature and repeatedly affirmed by judicial precedent.

66. Consequently, the proceedings arising out of Hare Street Police Station Case No. 691 dated 15th October, 2001 corresponding to Complaint Case No. 5165 of 2001 under Sections 406, 420 and 120B of the Indian Penal Code stand quashed.

67. All consequential proceedings arising therefrom shall stand terminated. Connected applications, if any, stand disposed of.

68. There shall be no order as to costs.

69. The endeavour of Opposite Party No. 2 to invoke Section 340 of the Code of Criminal Procedure also does not commend acceptance.

70. Section 340 of the Code of Criminal Procedure is not designed as a weapon to be deployed in aid of private vengeance or as a collateral strategy in protracted litigation. The provision is intended to preserve the purity of judicial proceedings and to protect the administration of justice from deliberate acts of perjury, fabrication of evidence or offences contemplated under Section 195(1)(b) of the Code. The legislative focus is therefore not the private injury allegedly suffered by a litigant but the impact of the alleged conduct upon the judicial process itself.

71. The Constitution Bench in the celebrated decision of *Iqbal Singh Marwah v. Meenakshi Marwah* (supra) authoritatively explained that initiation of proceedings under Section 340 of the Code of Criminal Procedure is

conditioned by the Court forming an opinion that such course is expedient in the interests of justice. The provision does not contemplate automatic prosecution whenever an allegation of falsehood is raised. The Court is required to assess whether the alleged act has substantially affected the administration of justice and whether the larger interests of judicial integrity demand initiation of criminal proceedings.

72. Examined on the aforesaid touchstone, the allegations advanced by Opposite Party No. 2 fall considerably short of the statutory threshold.
73. The foundation of the application under Section 340 of the Code of Criminal Procedure rests upon the assertion that the petitioner had referred to an arbitration proceeding and certain correspondence connected therewith. The records reveal that the controversy regarding the existence, scope and legal effect of such arbitration forms part of the broader dispute between the parties concerning the underlying transaction. Whether a particular arbitration proceeding was pending, whether correspondence was exchanged and whether the petitioner's understanding of the legal position was accurate are matters requiring adjudication upon evidence. Such questions cannot, by themselves, furnish a basis for recording a prima facie conclusion that an offence affecting administration of justice has been committed.
74. Equally significant is the fact that the alleged documents were neither forged nor fabricated while in the custody of the Court. The grievance of Opposite Party No. 2 is directed against documents and representations said to have originated outside the precincts of the Court and prior to their production in judicial proceedings. The Constitution Bench in *Iqbal Singh Marwah* drew a

clear distinction between a document forged before its production in Court and a document tampered with while remaining in custodia legis. The restrictive mechanism embodied in Sections 195 and 340 of the Code of Criminal Procedure becomes operative principally where the offence bears a direct nexus with the administration of justice in relation to judicial proceedings.

75. The factual narrative before this Court discloses a commercial dispute concerning a property transaction, refund of consideration and rival contractual claims. The application under Section 340 of the Code of Criminal Procedure appears to have emerged nearly eighteen years after institution of the revisional proceeding. Such extraordinary delay considerably diminishes the plea that immediate intervention became necessary to safeguard the sanctity of judicial administration.

76. Another circumstance of considerable relevance is that the order granting bail in favour of the petitioner attained finality long ago. The correctness of the submissions recorded at the stage of bail was never subjected to challenge before the appropriate forum. An application under Section 340 of the Code of Criminal Procedure cannot be permitted to assume the character of an indirect challenge to judicial orders that have long since acquired finality.

77. The Court is also mindful that proceedings under Section 340 of the Code of Criminal Procedure are not intended to determine the veracity of every disputed statement made by litigants. Judicial proceedings frequently involve competing factual assertions. Acceptance of the proposition

canvassed by Opposite Party No. 2 would transform Section 340 of the Code of Criminal Procedure into a routine adjunct of adversarial litigation, a consequence consistently discouraged by judicial authority. The jurisdiction is reserved for cases where the administration of justice itself has suffered a demonstrable assault. No such circumstance emerges from the materials placed before this Court.

78. The dispute between the parties, viewed in its entirety, remains anchored in contractual obligations, alleged defects in title, financial claims and consequences arising from the transaction relating to the property. The invocation of Section 340 of the Code of Criminal Procedure appears ancillary to that larger contest. The materials on record do not persuade this Court that initiation of perjury proceedings would advance the interests of justice or preserve the dignity of the judicial process.

79. Consequently, the application under Section 340 of the Code of Criminal Procedure lacks the juridical foundation necessary for invocation of that extraordinary jurisdiction and does not create any impediment to the exercise of revisional powers in favour of the petitioner.

80. This analysis dovetails with the other grounds for quashing, namely:

- a. Absence of the foundational ingredients of Sections 406, 420 and 120B of the Indian Penal Code.
- b. Predominantly civil and contractual character of the dispute.
- c. Existence of an agreed arbitral mechanism.
- d. Lack of jurisdiction in the Magistrate to direct "reinvestigation".

- e. Abuse of criminal process by converting a commercial dispute into a penal prosecution.
- f. Failure of the materials collected during investigation to disclose a *prima facie* criminal offence warranting trial.

81. In view of the above discussions, the proceedings in connection with Complaint Case No.5165 of 2001 under Section 406/420 read with Section 120B of the Indian Penal Code and the order dated 4th April, 2006 passed by the Learned Chief Metropolitan Magistrate, Calcutta in Hare Street P.S. Case No.691 dated 15th October, 2001 is quashed.

82. Under such fact and circumstances, the criminal revisional application being CRR 1522 of 2006 is allowed.

83. Accordingly, CRR 1522 of 2006 stands disposed of. Connected application, if any, also stands disposed of.

84. Case Diary, if any, to be returned.

85. Let the copy of this judgment be sent to the Learned Trial Court for necessary information and compliance.

86. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)