IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

C.R.R. 1250 of 2012

Arun Kumar Jhajharia
versus
Raju Rahaman & Anr.

For the Opposite Party No.1	:	Mr. Swarup Banerjee Mr. Arindom Chatterjee Mr. Subham Biswas Mr. Arinjay Pal
Heard on	:	01.04.2026, 13.05.2026, 01.07.2026
Judgment on	:	08.07.2026

<u>Bivas Pattanayak, J. :-</u>

1. This matter is appearing in the list under the heading *'For Orders'.*

2. None appears on behalf of the petitioner.

3. This revisional application is preferred by the petitioner challenging the judgment and order dated 4th February, 2012 passed by the learned Additional District & Sessions Judge, Fast Track Court No.II, Bichar Bhawan, Calcutta in Criminal Appeal No.64 of 2011 dismissing the appeal and affirming the order of the learned Metropolitan Magistrate, 11th Court, Calcutta dated 16th March, 2011 in connection with Case No.C/1621 of 2007 under Section 420/120B of the Indian Penal Code, 1860 (*in short, 'IPC').*

4. The brief fact of the case is that the petitioner filed a complaint case against opposite party no.1, Raju Rahaman and opposite party no.2, Md. Bashiruddin before the learned Chief Metropolitan Magistrate, Calcutta under Sections 120B/420 of IPC which was registered as Case No.C/1621/07. The said case was transferred to the file of the learned Metropolitan Magistrate, 11th Court, Calcutta for enquiry and trial. The petitioner examined himself as PW1 and one Suman Roy as PW2 before charge and cross-examination of the witnesses were declined at that stage. Subsequent thereto charges were framed under Section 420 of IPC and section 120B read with Section 420 of IPC. Upon framing of the charge, the prosecution witnesses were cross-examined by the defence. Thereafter, opposite parties-accused persons were examined under Section 313 of the Code of Criminal Procedure, 1973 (*in short, 'Cr.P.C.')*. By judgment and order dated 16th March, 2011 the learned trial court was pleased to acquit the opposite parties. Challenging such judgment and order of the learned trial court the petitioner preferred an appeal under Section 372 of Cr.P.C. before the learned Chief Judge, City Sessions Court, Calcutta, which was registered as Criminal Appeal No.64 of 2011. The appeal was dismissed by the learned appellate court *vide* judgment and order dated 4th February, 2012. Being aggrieved by and dissatisfied with the judgment and order of the learned appellate court the petitioner has preferred the present revisional application.

5. Mr. Swarup Banerjee, learned Advocate appearing on behalf of the opposite parties-accused persons, at the outset, informed the court that during the pendency of the revisional application, opposite party no.2, Md. Bashiruddin expired on 27th September, 2025 and he filed a copy of the death certificate being no.D/2025/0505547 dated 28th September, 2025 of the opposite party no.2, which was taken on record. He sought for expunging the name of the opposite party no.2, Md. Bashiruddin from the array of the opposite parties.

6. Considering the submissions advanced by learned advocate representing the opposite parties as well as the death certificate furnished by him, let the name of opposite party no.2, Md. Bashiruddin be expunged from the array of the opposite parties on the ground of his death on 27th September, 2025 as is appearing from the death certificate.

7. Mr. Banerjee, learned advocate for opposite parties-accused persons opened his argument by submitting that even if the petitioner is not present to argue his own case, the revisional application can be disposed of upon on merit upon hearing the appearing parties who are present before this Hon'ble Court considering the materials on record and judgment of the learned appellate court. To buttress his contention, he relied on the following decisions of the Hon'ble Supreme Court passed in ***(i) Bani Singh and others versus State of U.P.,*** reported in ***(1996) SCC (Cri) 848; (ii) Surya Baksh Singh versus State of Uttar Pradesh,*** reported in ***(2014) 14 SCC 222.*** Relying on the decision of the Hon'ble Supreme Court in ***Kishan Singh (D) through LRs versus Gurpal Singh and others,*** reported in ***(2010) 3 SCC (Cri) 1091,*** he submitted that in civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. The standard of proof is different in civil and criminal cases. The petitioner previously filed a complaint against the opposite parties under Section 138 of the Negotiable Instruments Act (*in short, 'N.I. Act')* for dishonor of cheque. On the selfsame cause of action and facts the petitioner-complainant has filed the subsequent complaint against the opposite parties under Sections 420/120B of IPC, which is not maintainable. There is no iota evidence to suffice and make out an offence of cheating and conspiracy against the accused persons beyond the shadow of reasonable doubt. Such aspect has been considered by both learned trail court as well as learned appellate court. Thus, the judgment and order impugned of the learned appellate court does not call for interference. He seeks for dismissal of the revisional application.

8. At the outset, it is found that neither the petitioner nor his learned counsel was present on the date the matter was at first taken up by this Court on 1st April, 2026. Thereafter, on 13th May, 2026 and ultimately on 1st July, 2026 when the matter was finally taken up for passing orders, the petitioner or his learned counsel also did not appear. Thus, record reveals that on several dates the petitioner did not appear or was represented. In the aforesaid backdrop, it is now to be decided as to whether the High Court is empowered to dispose of a criminal case on merits if the Learned Counsel for the petitioner does not appear on the date the matter is listed.

8.1. In order to examine the above issue, it would be profitable to deal with the relevant provisions of CrPC and the precedents of Hon'ble Supreme Court.

8.2. Section 401 of CrPC lays down the High Court's power on revision. The said section specifically provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretions, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307. Thus, the revisional power and the appellate power of the High Court are co-extensive. Section 386 of CrPC prescribes the powers of the Appellate Court to deal with appeal and provides that "after perusing such record and hearing the Appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of appeal under section 377 or 378, the accused, if he appears" the Appellate Court "may, if it considers that there is no sufficient ground for interference, dismiss the appeal."

8.3. The authority of High Court in such eventuality came for consideration before the Hon'ble Supreme Court in ***Shyam Deo Pandey & Others versus The State of Bihar*** reported in ***(1971) 1 SCC 855.*** In the aforesaid case, the High Court at the time of hearing an appeal against an order of conviction, found the Appellant's pleader was absent. In such circumstances it perused the impugned judgment of the learned trial court and finding no merit dismissed the appeal. The Hon'ble Supreme Court in the above decision took the view that once the appeal was admitted, it was the duty of the Court to peruse the records and dispose of the appeal on merits, even if the Appellant or his counsel is absent. Since the High Court dismissed the case *in limine* without following the mandatory requirements, the order was set aside by the Hon'ble Supreme Court.

8.4. In the case of ***Ram Naresh Yadav & Others versus State of Bihar*** reported in ***AIR 1987 SC 1500***, the Hon'ble Supreme Court in a similar situation took the view that in criminal matters the convicts must be heard before the matters are decided on merits. Accordingly, it set aside the order of the High Court and remanded the matter for passing an appropriate order by the High Court in accordance with law after hearing the

Appellants or their counsel, and on their failure to engage counsel, after hearing the counsel appointed by the Court to argue on their behalf.

8.5. In view of conflicting decisions, the matter was referred to a larger Bench of the Hon'ble Supreme Court and in the case of *Bani Singh (supra)* it was observed that in *Ram Naresh Yadav (supra)*, the Court neither analysed the relevant provisions of CrPC nor did it notice the view taken in *Shyam Deo*'s *(supra)*. After careful consideration of the view expressed in the aforesaid two decisions and after analyzing the law in question the Hon'ble Apex Court held as follows:

> *"**14.** We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo case [(1971) 1 SCC 855 : 1971 SCC (Cri) 353 : AIR 1971 SC 1606] appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav case [AIR 1987 SC 1500 : 1987 Cri LJ 1856] that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.*
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> ***15.** Secondly, the law expects the appellate court to give a hearing to the appellant or his counsel, if he is present, and to*

the public prosecutor, if he is present, before disposal of the appeal on merits. Section 385 posits that if the appeal is not dismissed summarily, the appellate court shall cause notice of the time and place at which the appeal will be heard to be given to the appellant or his pleader. Section 386 then provides that the appellate court shall, after perusing the record, hear the appellant or his pleader, if he appears. It will be noticed that Section 385 provides for a notice of the time and place of hearing of the appeal to be given to either the appellant or his pleader and not to both presumably because notice to the pleader was also considered sufficient since he was representing the appellant. So also Section 386 provides for a hearing to be given to the appellant or his lawyer, if he is present, and both need not be heard. It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided Ram Naresh Yadav case [AIR 1987 SC 1500 : 1987 Cri LJ 1856] did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the appellate court was under an obligation to adjourn the case to another date if the appellant or his lawyer remained absent.

16. *Such a view can bring about a stalemate situation. The appellant and his lawyer can remain absent with impunity, not once but again and again till the court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the court in the same situation. Such a procedure can, therefore, prove cumbersome and can promote*

> *indiscipline. Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted.*
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> ***17.*** *In view of the position in law explained above, we are of the view that the High Court erred in dismissing the appeal for non-prosecution simpliciter without examining the merits. We, therefore, set aside the impugned order and remit the appeal to the High Court for disposal on merits in the light of this judgment. The appeal will stand allowed accordingly."*

8.6. Thus, the Hon'ble Court explicitly expressed that law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. The aforesaid decision is also followed in *Surya Baksh Singh (supra).* Thus, the legal position is firmly established across multiple High Court and Supreme Court that a criminal revision cannot be dismissed for default or non-prosecution merely because the revisionist or their counsel fails to appear. Once a criminal revision is admitted and registered, the revisional court is duty-bound to decide the matter on its merits, irrespective of the presence or absence of the parties. The proper course for the court when parties are absent is to (i) Peruse the revision petition and impugned order; (ii) Examine the records and grounds of challenge; (iii) Pass a reasoned order on merits. ***[Also See Santosh versus State of U.P.*** reported in ***(2010) 3 SCC (Criminal) 307]***

8.7. In the aforesaid conspectus, despite absence of the petitioner, the matter is taken up for disposal on merits on the basis of materials on record.

9. Upon going through the judgment and order of the appellate court, it is found that the learned Appellate court has dismissed the appeal *firstly* on the ground that one cannot be tried or convicted twice even for same and different offences on the same facts since it is barred under section 300(1) of CrPC and *secondly* that the ingredients of section 420 of IPC read with section 120B of IPC has not been proved against the opposite parties affirming the findings of the learned trial court in such regard.

10. Admittedly, the complainant filed the instant case against the opposite parties under section 420 of IPC read with section 120B of IPC. Another case under section 138 of Negotiable Instruments Act *(in short 'NI Act')* against the opposite party no.1 for dishonour of cheque was also filed by the complainant. The opposite party no.1 has been convicted in the complain case no.C-3759 of 2007 on 5th February, 2009 (as noted by the learned trial court in page no.2 of its judgment). Being aggrieved by the sentence imposed in the aforesaid case, the petitioner preferred a revision before the High Court being CRR no. 908 of 2009 for enhancement of sentence. The said revision was disposed of on 12th December, 2022 directing for enhancement of compensation amount. Now the question arises at this juncture is whether upon conviction of a person for offence under 138 of NI Act, trying a person under section 420 IPC is permissible.

11. Section 300 CrPC provides that a person who has once been tried by the court for an offence shall not be liable to be tried again for the same offence, or on the same facts for any other offence. The principle of double jeopardy is a well-established principle of criminal law. The rule of double jeopardy is also enshrined in Article 20(2) of the Constitution which provides that no person shall be prosecuted and punished more than once for the same offence. Moreover, Section 26 of the General Clauses Act, 189734 also provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall not be liable to be punished twice for the same offence. In the present context, thus the pertinent question is whether parallel prosecution under NI Act and IPC would amount to punishing the accused twice for the same offence. For the reasons of conflicting decisions in respect of the aforesaid question, the Hon'ble Supreme Court had in the judgment titled ***J. Vedhasingh versus R.M. Govindan*** reported in ***2022 SCC Online SC 1010*** referred to a larger Bench the question as to whether an accused can be tried based on a similar set of facts for an offence under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act) as well as an offence such as Section 420 under the Penal Code, 1860 (IPC). Such question is still pending before the larger Bench.

12. Be that as it may, there cannot be any quarrel that opposite party no.1, Raju Rahaman has already been convicted in respect of offence under Section 138 of NI Act on 5th February, 2009, during the pendency of the complaint under Section 420 read with Section 120B of IPC. In a similar situation, the Hon'ble Supreme Court in ***Kolla Veera Raghav Rao***

versus Gorantla Venkateswara Rao, reported in ***(2011) 2 SCC 703*** held as follows.

> *'3. The learned counsel for the appellant submitted that the appellant was already convicted under Section 138 of the Negotiable Instruments Act, 1881 and hence he could not be again tried or punished on the same facts under Section 420 or any other provision of IPC or any other statute. We find force in this submission.*
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> *4. It may be noticed that there is a difference between the language used in Article 20(2) of the Constitution of India and Section 300(1) CrPC. Article 20(2) states:*
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> > *"20. (2) No person shall be prosecuted and punished for the same offence more than once."*
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> *On the other hand, Section 300(1) CrPC states:*
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> > *"300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof."*
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> *5. Thus, it can be seen that Section 300(1) CrPC is wider than Article 20(2) of the Constitution. While Article 20(2) of the Constitution only states that "no person shall be prosecuted and punished for the same offence more than once", Section 300(1) CrPC states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.*
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> *6. In the present case, although the offences are different but the facts are the same. Hence, Section 300(1) CrPC applies. Consequently, the prosecution under Section 420 IPC was barred by Section 300(1) CrPC."*

13. Thus, it manifests from the above decision of the Hon'ble Supreme Court that once the conviction under Section 138 of the NI Act has been recorded, the question of trying a same person under Section 420 IPC is not permissible being hit by Section 300 CrPC as well as Article 20(2) of the Constitution of India.

14. In the complaint the petitioner has not stated of handing over of any cheque by the accused which was subsequently been dishonoured. However, fact remains that PW1(complainant) in his examination-in-chief stated that the accused person delivered a cheque of Rs.24,000/- on 22nd September 2006 and due to dishonor of the said cheque he has filed a separate case against the accused. The facts in both the cases arise out of business transaction and are similar in nature. Thus, both the prosecutions under 138 N.I. Act and under Section 420/120B of IPC initiate from similar set of facts. Bearing in mind the proposition of Hon'ble Supreme Court in *Kolla Veera Raghav Rao (supra)* as order of conviction is passed against opposite party no.1 under the NI Act pending complaint under Section 420 read with Section 120B of IPC, hence although the offences are different but the facts being the same, the bar under Section 300(1) CrPC applies and consequently, the prosecution under Section 420 IPC is barred by Section 300(1) CrPC. In the above conspectus this court does not find any perversity or irregularity in the findings of the learned appellate court holding that the bar under section 300(1) of the CrPC applies to the facts and circumstances of this case.

15. Now with regard to whether the ingredients of section 420 of IPC read with section 120B of IPC has been proved, let me examine the evidence on record.

15.1. In order to assess the above issue, it would be profitable to reproduce the essential ingredients of *'Cheating'* under Section 420 of IPC which are as follows namely (i) deception of any person, either by making a false or misleading representation or by other action or by omission; (ii) fraudulently or dishonestly inducing any person to deliver any property, or (iii) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. Further mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is such intention, which is the gist of the offence. In backdrop of the said ingredients, let me assess the evidence of the complainant (PW1). The complainant (PW1) deposed that both the accused persons introduced themselves to be dealing in foam business and proposed to deal with him. The complainant agreed to deal with accused persons subject to payment on the spot. The accused persons agreed to such terms. However, due to financial crisis of the accused persons he delivered goods on credit on good faith but the accused persons did not make payment. Accused persons handed over a cheque of Rs.24,000/- on 22nd September, 2006 and further delivery was made on good faith. The said cheque was dishonoured and he filed a case for such dishonour. PW1 in his examination in chief admitted that the first delivery was made on 21st April 2005 and second delivery was made on 20th May, 2005. Therefore, the contention of the petitioner that he delivered the goods on good faith for the second time upon handing over of a cheque by the accused persons cannot be accepted for the simple reason that the cheque was handed much after the second delivery was made. It is also stated that the accused persons failed to make payment after the first delivery of goods. If that be so, then how the second delivery was made without the payment been made of the first delivery. There is no explanation in this regard. The evidence of PW1 in cross-examination shows that he did not place any demand in writing or made any complaint to the police over the issue of non-payment. Thus, it appears that the dispute arises out of an agreement concerning business between the parties. There is nothing in the evidence of the complainant of fraudulent or dishonest intention of the accused persons right from the beginning of the transaction i.e. the time when the offence is said to have been committed.

15.2. Further there is also no evidence that both the accused persons conspired together to cheat the complainant.

15.3. In the above conspectus this court finds that there is no illegality or perversity in the impugned judgment and order of the learned appellate court affirming the judgment and order of the learned trial court.

16. Accordingly, **C.R.R. 1250 of 2012** stands dismissed. The judgment and order dated 4th February, 2012 passed by the learned Additional District & Sessions Judge, Fast Track Court No.II, Bichar Bhawan, Calcutta in Criminal Appeal No.64 of 2011 is hereby affirmed.

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

18. Interim order, if any, stands vacated.

19. All concerned parties shall act in terms of the copy of the judgment duly downloaded from the official website of this Court.

20. Let a copy of this judgment be forwarded to learned appellate court as well as learned trial court alongwith the trial court records for information.

21. Urgent Photostat certified copy of the judgment, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)