IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 4089 OF 2022

VISHAL AGARWAL
-VS-
STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Rachit Lakhmani Mr. Anurag Sardar
For the State	: Mr. Pawan Kr. Gupta Mr. Shreyash Kr. Singh
For the Opposite Party No.2	: Mr. Satadru Lahiri Ms. Swati Chowdhury
Reserved on	: 16.09.2026
Pronounced on	: 12.10.2026

UDAY KUMAR, J.: –

1. The petitioner before this Court, Shri Vishal Agarwal, claims ownership of an industrial factory shed measuring approximately 16,000 square feet of built-up area, situated at J.L. No. 2, Mouza Jala-Dhulagori, P.S. Sankrail, District Howrah, in the State of West Bengal. Opposite Party No. 2, Shri Vivek Agarwal, acting in collaboration with one Shri Brij Lal Bansal on behalf of a proposed corporate entity (Bansal Poly Plast Pvt. Ltd., Delhi), approached the petitioner with the expressed objective of taking the said premises on lease to establish a manufacturing plant for

plastic granules. Following initial deliberations, the parties executed a *Leave and License Agreement* on December 11, 2018, contemplating a 12-month tenure commencing from January 1, 2019, to December 31, 2019, with a structured monthly rent escalation and a mandatory one-year lock-in period. However, a closer scrutiny of this document reveals that on the date of its execution, the proposed corporate entity had not even been incorporated. Consequently, the agreement remained an inchoate draft: the name of the licensee company was left blank, board resolution particulars were missing, and post-dated cheques for monthly rent were never furnished.

2. To secure the transaction and facilitate preliminary requirements, certain financial exchanges nevertheless transpired between the parties. Opposite Party No. 2 issued a security deposit cheque for Rs. 19,25,760/- (Cheque No. 106894 dated December 12, 2018) drawn on Axis Bank, Howrah, which the petitioner successfully encashed. Furthermore, toward electricity security, a cheque for Rs. 25,00,000/- (Cheque No. 106895 dated December 19, 2018) was handed over. Subsequently, upon a revision of the required electrical load for the manufacturing unit from 250 KVA to 200 KVA, a sum of Rs. 20,00,000/- was transferred vide Cheque No. 106896 dated December 20, 2018 with the mutual understanding that the earlier issued cheque of Rs. 25 lakhs dated December 19, 2018 would be returned by the petitioner.

3. A sharp divergence in the factual narrative emerges at this juncture. Opposite Party No. 2 alleges that upon being permitted an inspection of

the premises on December 24, 2018, it transpired that the foundational representations made by the landlord, regarding a ready 250 KVA electrical load capacity, pre-installed exhaust chimneys, and proper industrial flooring suitable for heavy machinery, were entirely false, rendering the premises structurally unfit for manufacturing. Conversely, the petitioner-landlord contends that the property was accepted by the tenants on an *"as-is-where-is basis"* pursuant to Clause 11 of the License agreement, and that at the explicit verbal request of the tenants, the petitioner undertook extensive factory flooring work in the said premises amounting to Rs. 44,35,000/-, utilizing the Rs. 20 lakhs Cheque transfer made by the Opposite Party No. 2, while leaving a substantial balance unpaid.

4. This commercial friction rapidly deteriorated into an exchange of formal notices and cross-litigation. On February 11, 2019, Opposite Party No. 2 issued a legal notice demanding the refund of Rs. 39,25,760/- and the return of uncashed cheques, thereby rescinding the License arrangement. Finding his dues unpaid and apprehending evasion, the petitioner lodged a General Diary (G.D. No. 972) at Bidhannagar Police Station (South) on February 17, 2019. Thereafter, on March 14, 2019, the petitioner presented the prior unreturned electricity security cheque (No. 106895 for Rs. 25 lakhs), which was dishonoured upon presentation due to stop-payment instructions. This dishonour culminated in the issuance of a statutory demand notice under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act') on March 18, 2019, and the subsequent filing of a

complaint case before the Court of the learned Additional Chief Judicial Magistrate, Sealdah, registered as N.I. Act Case No. 122 of 2019.

5. As a direct counter-blast to the initiation of the statutory cheque-bounce proceedings under the N.I. Act, Opposite Party No. 2 lodged a criminal complaint at Golabari Police Station on April 25, 2019, alleging cheating, criminal breach of trust, and criminal intimidation under Sections 420, 406, and 506 of the Indian Penal Code, registered as Golabari P.S. Case No. 148 of 2019. Following an investigation including recording statements under Section 164 of the Code of Criminal Procedure, the investigating agency submitted Charge Sheet No. 149 of 2021 dated May 26, 2021, culminating in G.R. Case No. 2138 of 2019 before the Learned Chief Judicial Magistrate at Howrah. Parallelly, Opposite Party No. 2 instituted a civil money suit (Money Suit No. 148 of 2019) before the 3rd Court of the learned Civil Judge (Senior Division) at Howrah, for the recovery of the deposited sums.

6. It is against this backdrop of parallel civil, criminal, and statutory trajectories that the petitioner Shri Vishal Agarwal has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973. By filing the instant criminal revision application, C.R.R. No. 4089 of 2022, the petitioner is seeking the quashing of the criminal proceedings arising out of Golabari P.S. Case No. 148 of 2019 (corresponding to G.R. Case No. 2138 of 2019), pending before the Court of the Learned Chief Judicial Magistrate at Howrah, on the principal grounds that the dispute is predominantly civil in nature, that the essential ingredients of Sections 420 and 406

IPC are absent and mutually destructive, and that the criminal proceeding is a malicious counter-blast designed to derail the Section 138 N.I. Act proceedings.

7. Mr. Rachit Lakhmani, learned counsel appearing for the petitioner, submitted that the continuation of the criminal proceedings in G.R. Case No. 2138 of 2019 constitutes a gross and flagrant abuse of the process of law. He contended that when the foundational facts are examined alongside contemporaneous documents and the chronological sequence of notices, they indubitably establish that the dispute is purely commercial in character, having been converted into a criminal prosecution solely as a retaliatory pressure tactic.

8. The primary challenge of the Mr. Lakhmani is that the opposite party's criminal complaint alleging initial deception and fraudulent inducement, is entirely contrary to admitted records, inherently improbable, and unworthy of belief by any prudent person. Expanding on his challenge, he pointed out that Opposite Party No. 2 (Vivek Agarwal), a self-admitted industrialist and businessman of substantial means running multiple manufacturing units across states, explicitly admitted in his legal notice dated February 11, 2019, that he personally approached the petitioner and selected the factory premises after careful evaluation. Furthermore, the *Leave and License Agreement* dated December 11, 2018, was duly signed and executed by both parties at the tenant's residence. Under Clause 11 of the said License agreement, the opposite party No. 2 expressly accepted the property on an *"as is where is basis"* after full inspection, and under Clause 12

thereof, agreed that any customization, civil work, repairs, or beautification of the said leased premises would be carried out exclusively at his own expense. Consequently, the opposite party No. 2 is legally *estopped* from turning around and claiming that he was fraudulently induced into entering the transaction or that the landlord/petitioner failed to develop the property to his satisfaction.

9. Addressing the specific defence taken by the opposite party No. 2 in its affidavit-in-opposition, Mr. Lakhmani submitted that the labelling the December 11, 2018 agreement as an unexecuted worthless draft while simultaneously admitting to the execution of stamped pages and the making of substantial financial payments, such as encashing the security deposit cheque of Rs. 19,25,760/- and of another amount Rs. 20 lakhs vide cheque transfer, exposes a glaring contradiction. He reiterated that at the explicit verbal request of the Opposite Party No. 2, the petitioner undertook extensive factory flooring work amounting to Rs. 44,35,000/-, leaving a substantial balance unpaid, and that the sudden narrative of fraud is nothing more than an afterthought designed to evade legitimate commercial commitments.

10. It was vehemently urged that the criminal complaint was lodged on April 25, 2019, purely as a malicious after-thought and counter-blast to the statutory cheque bounce proceedings initiated by the petitioner under the provisions of the N.I. Act. The chronology demonstrates that after the Opposite Party No. 2 abruptly walked away, the petitioner presented the electricity security cheque (No. 106895 for Rs. 25,00,000/-) issued by the said Opposite Party on March 14, 2019.

Upon its dishonour due to stop-payment instructions, the petitioner promptly issued a statutory demand notice on March 18, 2019, and instituted a complaint under Section 138 of the N.I. Act (NI Act Case No. 122 of 2019) on April 18, 2019. It was only upon feeling the pressure of imminent prosecution under the N.I. Act that the opposite party cooked up a false criminal narrative and filed the Golabari P.S. FIR as a retaliatory shield.

11. To substantiate his such contention, learned counsel for the petitioner placed strong reliance upon the binding judicial principles laid down by the Hon'ble Supreme Court in *Sunil Kumar v. Escorts Yamaha Motors Ltd. & Ors., [(1999) 8 SCC 468]* and in *D.P. Gulati, Manager Accounts, JetKing Infotrain Limited v. State of Uttar Pradesh & Anr., [(2015) 11 SCC 730]*, wherein it has been authoritatively held that an FIR lodged as a counter-blast to cheque-bounce proceedings out of personal vendetta constitutes an abuse of the process of law and is liable to be quashed. Additionally, the learned counsel for the petitioner has also relied on *Mahmood Ali & Ors. v. State of U.P. & Ors., [(2023) 15 SCC 488],* wherein it has been underscored that to ascertain whether an FIR is tainted by an ulterior motive of wreaking vengeance, the Court must look beyond the bare text of the complaint into the attending circumstances and the timeline leading up to its filing.

12. Mr. Lakhmani further submitted that even if the allegations in the charge-sheet are accepted at their face value, the essential ingredients constituting offences under Sections 420 and 406 of the IPC are fundamentally missing insomuch as to make out an offence of criminal

breach of trust punishable under Section 406 IPC, there must be a clear entrustment of property or dominion over it acquired honestly, followed by subsequent dishonest misappropriation. In the present case, no money or property was ever entrusted in a fiduciary capacity; rather, the funds received were standard security deposits and part-payments made in furtherance of a commercial lease transaction.

13. Mr. Lakhmani contends further that the offence of cheating under Section 420 IPC requires a dishonest or fraudulent intention (*mens rea*) from the very inception of the transaction, which has not been demonstrated in the present case. The petitioner argued that the opposite party No. 2 cannot blow hot and cold simultaneously by alleging a dishonest intention from inception to attract punishment under Section 420 IPC while also claiming that property was lawfully entrusted and subsequently misappropriated to attract the offence of criminal beach of trust punishable under Section 406 IPC.

14. In support of his such contention, he relied heavily upon the authoritative pronouncements of the Hon'ble Supreme Court in *Lalit Chaturvedi & Ors. v. State of U.P. & Anr., [2024 SCC OnLine SC 171]* and *Delhi Race Club (1940) Ltd. & Ors. v. State of Uttar Pradesh & Ors. [(2024) 10 SCC 690]*, wherein the Apex Court settled that Sections 406 and 420 of the IPC cannot be simultaneously applied to the same transaction, as the mental elements and ingredients of both offences are mutually destructive and legally inconsistent.

15. Mr. Lakhmani also drew the attention of this Court to a glaring anomaly on the face of the police record itself, where the Investigating Officer, in

the concluding paragraphs of the charge-sheet No. 149/2021, explicitly recorded that the dispute essentially *'arises out of a tenancy-related civil matter'*, contending that the said charge-sheet was submitted not on the basis of independent criminal culpability as investigated by the said Investigating Officer, but merely under direction and administrative pressure from superior police authorities.

16. Finally, Mr. Lakhmani submitted that the Opposite Party No. 2 has already approached the proper and efficacious forum for the adjudication of their commercial grievances by instituting Money Suit No. 148 of 2019 before the Civil Court at Howrah, wherein rival claims regarding lease rentals, security adjustments, and flooring expenses (amounting to Rs. 24.35 lakhs incurred by the petitioner) are actively pending trial. Permitting a parallel criminal proceeding to continue over a failed commercial lease agreement would convert the criminal court into an instrument for recovery and persecution. Therefore, he prayed that the criminal proceedings in G.R. Case No. 2138 of 2019 initiated against the petitioner, along with the charge-sheet arising out of Golabari P.S. Case No. 148 of 2019, be quashed and set aside in the interest of justice.

17. *Per contra*, Mr. Satadru Lahiri, learned counsel appearing on behalf of Opposite Party No. 2 (the complainant/tenant), and Mr. Pawan Kumar Gupta, the learned Counsel for the State/Opposite Party No 1, strenuously opposed the instant criminal revisional application and submitting that the petition under Section 482 of the Code of Criminal Procedure, 1973, is wholly misconceived, devoid of merit, and liable to

be dismissed *in limine* with exemplary costs. It was contended that the foundational materials collected by the investigating agency during a thorough and impartial investigation have conclusively established a *prima facie* case of criminal culpability against the petitioner-landlord under Sections 420, 406, and 506 of the Indian Penal Code, culminating in Charge Sheet No. 149 of 2021, and that this Court ought not to interfere with such findings in exercise of its extraordinary or inherent jurisdiction.

18. Elaborating upon the factual narrative from the opposite party's perspective, it was submitted that the transactions between the parties was vitiated by active deception and false representations right from its inception. The opposite party, by way of false representation, was allured into believing that the factory shed possessed all mandatory industrial prerequisites, specifically a ready 250 KVA electrical connection, proper industrial-grade flooring, and pre-installed exhaust chimneys. The opposite party contended that the petitioner created a false commercial urgency, inducing them to execute the draft Leave and License Agreement on December 11, 2018, and part with substantial sums of money totalling Rs. 39,25,760/- (comprising a security deposit of Rs. 19,25,760/- via cheque and an electricity deposit of Rs. 20,00,000/- via cheque as well), alongside a blank electricity security cheque of Rs. 25,00,000/- (Cheque No. 106895).

19. The learned counsels for the opposite parties forcefully highlighted that it was only when physical inspection was finally permitted on December 24, 2018, that the complete fraud stood exposed, revealing that the

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shed lacked the promised electrical infrastructure, functional exhaust chimneys and industrial flooring. Consequently, the transaction never fructified, possession was never formally taken, and the License agreement remained an incomplete draft. Finding themselves duped, the opposite party rescinded the arrangement through the legal notice dated February 11, 2019, demanding the refund of their deposited monies.

20. Addressing the petitioner's plea of a "counter-blast," learned counsels for the opposite parties submitted that the demand for a refund was officially raised via the legal notice dated February 11, 2019, which the petitioner chose to ignore. Instead, actuated by *mala fides*, the petitioner illegally deposited the obsolete electricity security cheque (No. 106895 for Rs. 25 lakhs) on March 14, 2019, long after a replacement amount of Rs. 20 lakhs had been paid via cheque, triggering formal demand notice under Section 138 N.I Act as a pre-emptive shield, as such the criminal prosecution initiated by the Opposite Party No. 2 cannot be termed a retaliatory counter-blast.

21. They further pointed out that the police complaint resulting in Golabari P.S. Case No. 148 of 2019 was instituted on April 25, 2019, and the charge sheet was submitted on May 26, 2021, whereas the petitioner's Section 138 proceedings and subsequent summons only caught up with the opposite party much later. Therefore, the criminal prosecution initiated by the tenant cannot, by any stretch of imagination, be termed a retaliatory counter-blast.

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22. The learned counsels for the opposite parties further contended that the contentions raised by the petitioner, such as the condition of the premises, the execution of flooring work worth Rs. 44.35 lakhs, and the intent behind the financial transactions, are deeply rooted in disputed questions of fact. Relying on a catena of decisions by the Hon'ble Supreme Court settling the legal position, including *Sesami Chemicals Private Limited v. State of Meghalaya & Ors. [(2014) 16 SCC 711]*, *S.P. Gupta v. Ashutosh Gupta [(2010) 6 SCC 562]*, *Kamal Shivaji Pokarnekar v. State of Maharashtra & Ors., [(2019) 14 SCC 350]* and *Priti Saraf & Anr. v. State (NCT of Delhi) & Anr., [(2021) 16 SCC 142]*, the opposite parties urged that this Court, while exercising powers under Section 482 Cr.P.C., does not function as a trial court, cannot conduct a mini-trial, and must not embark upon a roving inquiry into competing factual versions. Once the police report and materials collected during investigation disclose a *prima facie* commission of offences, the prosecution must be permitted to proceed to its logical conclusion through trial.

23. Regarding the concurrent invocation of Sections 406 and 420 IPC, learned counsel for the opposite parties submitted that a criminal transaction can manifest multiple facets, and the exact framing of charges remains within the domain of the Trial Court under Section 216 or Section 228 of the Code, as recognized in *State of Karnataka v. M. Devendrappa & Anr., [(2002) 3 SCC 89].* Furthermore, the pursuit of a civil remedy (such as Money Suit No. 148 of 2019 filed by the O.P. No.

2 for recovery) does not *ipso facto* oust criminal liability where *prima facie* case is clearly made out.

24. Finally, they pointed out that the petitioners approached this Court with unclean hands, having suppressed material coexistent communications, including the Opposite Party No. 2's refund demand notice dated February 11, 2019, and the advocate's reply dated April 03, 2019 to the petitioner's demand notice dated March 18, 2019. On all these counts, learned counsels for the opposite parties pray for the outright dismissal of the instant criminal revisional application so that the trial may commence unhindered.

25. Having heard the learned counsels appearing for the respective parties at length, and upon a meticulous examination of the revisional application, pleadings, concurrent documents, police charge-sheet, and authoritative judicial pronouncements, this Court finds that the proper disposal of the instant criminal revision application centres upon the determination of the following core questions:

> ***Firstly,*** Whether the dispute arising out of the failed commercial lease transaction is predominantly and exclusively civil in nature, thereby rendering the initiation and continuation of criminal proceedings under Sections 420, 406, and 506 IPC an abuse of the process of Court?
>
> ***Secondly,*** Whether the essential ingredients necessary to constitute the offences of cheating punishable under Section 420 IPC and criminal breach of trust punishable under Section

406 IPC are *prima facie* disclosed, or whether the simultaneous invocation of both sections in respect of the same transaction is legally contradictory and mutually destructive?

Thirdly, Whether the criminal proceeding registered as Golabari P.S. Case No. 148 of 2019 is a malicious counter-blast instituted solely as a pressure tactic to circumvent the statutory cheque-bounce proceedings initiated earlier by the petitioner under Section 138 of the Negotiable Instruments Act, 1881?

Fourthly, Whether the rival factual contentions of the parties constitute disputed questions of fact warranting a full-fledged trial, or whether they justify interference of this Court within the limited scope of inherent jurisdiction under Section 482 Cr.P.C.?

26. For the determination of the first question, I have taken into consideration the foundational facts to examine the nature of the transaction and the subsequent conduct of the parties as reflected in the connected documents. The genesis of the present multi-forum litigation traces back to November and December 2018, revolving around a commercial real estate transaction that ultimately failed to materialize. Indubitably, the petitioner is the owner of a factory shed measuring approximately 16,000 square feet of built-up area situated at Sankrail Industrial Park, Howrah. Opposite Party No. 2, Shri Vivek Agarwal, acting in collaboration with Shri Brij Lal Bansal on behalf of a

proposed corporate entity (*Bansal Poly Plast Pvt. Ltd.*), approached the petitioner to lease the said premises/factory shed for establishing a manufacturing plant for plastic granules. On December 11, 2018, the parties executed a document styled as a Leave and License Agreement contemplating a 12-month tenure commencing from January 01, 2019.

27. The core grievance urged by Opposite Party No. 2 in the impugned criminal complaint is that he was deceived into parting with security deposits totalling ₹39,25,760/- and issuing an electricity security cheque of ₹25,00,000/- on the strength of false representations made by the landlord regarding a ready 250 KVA electrical load, pre-installed exhaust chimneys, and proper industrial flooring. However, upon a deeper and holistic scrutiny of the record, this Court finds that the opposite party's own contemporaneous legal notice dated February 11, 2019, explicitly records that *following their instructions, the premises were selected and inspected at the time of executing the agreement.* Furthermore, Clause 11 of the Leave and License Agreement expressly dictates that the licensee/Opposite Party No. 2 accepted the property on an *"as is where is basis"* after full inspection, while Clause 12 thereof stipulated that any customization, civil work, or repairs were to be executed by the licensee/Opposite Party No. 2 at his own personal expense.

28. When these foundational clauses of the License Agreement and admissions of the Opposite Party No. 2 as reproduced from the demand notice issued by him, are juxtaposed with subsequent events namely, the disputes regarding flooring work, failure to pay monthly lease

rentals, dishonour of security cheques, and eventual rescission of the said License Agreement, it becomes abundantly clear that the present *lis* revolves around the breach, frustration, and eventual fallout of a commercial tenancy contract. Both parties have already recognized the true character of this dispute by submitting themselves to the jurisdiction of the Civil court at Howrah through Money Suit No. 148 of 2019, wherein the Opposite Party No. 2/tenant seeks the refund of deposits and the Petitioner/landlord has lodged a comprehensive counter-claim for unpaid rent dues and flooring expenses amounting to Rs. 24.35 lakhs.

29. It is a well-settled principle of criminal jurisprudence, repeatedly underscored by the Hon'ble Supreme Court, that civil liability cannot be converted into criminal prosecution simply because a commercial bargain has soured or a subsequent contractual breach has occurred. While a breach of contract or unfulfilled commercial expectations may give rise to a robust civil remedy for damages or recovery of money, it does not *ipso facto* constitute an offence of cheating unless the foundational ingredients of criminal intent from the inception of the transaction are unmistakably demonstrated.

30. In this context, this Court draws immense guidance from the authoritative pronouncement of the Apex Court in *Dalip Kaur & Ors. v. Jagnar Singh & Anr., [(2009) 14 SCC 696],* wherein the Court observing that civil disputes should not be permitted to be dragged into criminal proceedings to exert undue pressure, had categorically held that an ordinary breach of contract does not constitute the offence of cheating

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unless it is shown that the accused had fraudulent or dishonest intention right from the inception of the transaction.

31. Similarly, in *Sarabjit Kaur v. State of Punjab & Anr., [(2023) 5 SCC 360]*, the Hon'ble Supreme Court emphasized that a civil dispute arising from a mere breach of an agreement should not be weaponized into a criminal prosecution, as doing so amounts to a clear abuse of the process of the court. The relevant observations underscore that those commercial transactions carrying civil remedies must find their resolution in civil forums unless the ingredients of criminal deception are manifestly and independently disclosed *ab initio*. Accordingly, Question No. 1 is answered in the affirmative in favour of the petitioner, holding that the dispute is predominantly and exclusively civil in nature.

32. Now, for determination of the second Question, this Court turns to evaluate the penal criminality alleged against the petitioner under Sections 420 and 406 IPC. As it appears from the perusal of police records, it is fact that the investigating agency, upon completion of investigation in Golabari Police Station Case No. 148 of 2019, submitted Charge Sheet No. 149 of 2021 on May 26, 2021, recommending the petitioner to stand trial for offences punishable under Sections 420, 406, and 506 of the Indian Penal Code, 1860. The core question before this Court is whether the ingredients necessary to sustain these penal provisions are legally discernible from the factual matrix, or whether the simultaneous invocation of both Sections 406

and 420 IPC suffers from an incurable legal contradiction and mutual destructiveness.

33. To examine the sustainability of the offence of 'cheating' punishable under Section 420 IPC, there must be a dishonest or fraudulent intention (*mens rea*) from the very inception of the transaction. A mere subsequent failure to fulfil a promise, or a eventual disagreement over lease terms or a contractual default, by any stretch of imagination, cannot be elevated to the offence of cheating unless a fraudulent design to deceive the complainant from the outset is established.

34. In the present case, the record reflects that the parties executed the 'Leave and License Agreement' on December 11, 2018, and financial exchanges (such as the encashment of security deposit cheque No. 106894 for ₹19,25,760/- and a subsequent cheque transfer of ₹20,00,000/-) took place in furtherance of a *bona fide* commercial tenancy negotiations, with the opposite party's legal notice acknowledging that the premises were selected and inspected following their commercial objectives.

35. Conversely, to constitute an offence of 'criminal breach of trust' punishable under Section 406 IPC, there must be a clear and unambiguous entrustment of property or dominion over it, acquired lawfully and honestly, followed by subsequent dishonest misappropriation or conversion to the accused's own use in violation of a legal direction. In the context of a commercial lease, standard security deposits and part-payments made toward contractual obligations do not constitute entrustment in a fiduciary or criminal capacity; rather, they

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represent commercial advances subject to contractual adjustments and liabilities.

36. In such event, the most critical legal infirmity troubling the impugned charge-sheet is the simultaneous and contradictory invocation of Sections 406 and 420 IPC in respect of the exact same transaction. It is legally impossible for the prosecution/ complainant to blow hot and cold air in the same breath inasmuch as simultaneously allege a dishonest intention from inception (to attract punishment under Section 420 IPC) while also asserting that property was lawfully entrusted and subsequently misappropriated (to attract punishment under Section 406 IPC).

37. This precise legal inconsistency has been authoritatively settled by the Hon'ble Supreme Court in *Lalit Chaturvedi (supra)* wherein the Apex Court emphatically held that Sections 406 and 420 of the IPC cannot be simultaneously applied to the same transaction, as the mental elements, foundational premises, and legal ingredients of both offences are mutually destructive and legally inconsistent. One offence is anchored on deception *ab initio*, while the other is anchored on lawful entrustment followed by subsequent misappropriation and conversion.

38. The said legal proposition has been further reinforced by the Hon'ble Supreme Court in *Delhi Race Club (supra)*, wherein the Apex Court reiterated that where the allegations fail to disclose the essential ingredients of initial deception or lawful entrustment, permitting a criminal prosecution to proceed under both mutually exclusive sections amounts to a flagrant abuse of the process of law. Consequently,

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Question No. 2. is also answered in the affirmative in favour of the petitioner, holding that the charge-sheet fails to disclose the necessary ingredients of the alleged penal offences punishable under Sections 420 and 406 IPC.

39. The third question for determination requires a rigorous, chronological examination of the sequence of legal steps taken by both parties to ascertain whether the impugned criminal proceeding initiated by Opposite Party No. 2 is an abuse of the process of law, designed specifically as a retaliatory counter-blast to frustrate the statutory cheque-bounce proceedings initiated earlier by the petitioner under the N.I. Act.

40. A chronological appraisal of the sequence of legal steps reveals an incontrovertible timeline. Following the breakdown of the transaction and the Opposite Party No. 2's failure to clear their dues, the petitioner-landlord deposited the electricity security cheque (No. 106895 for Rs. 25,00,000/-) on March 14, 2019. Upon its dishonour due to stop-payment instructions, the petitioner promptly issued a statutory demand notice under Section 138 of the N.I. Act on March 18, 2019, and subsequently instituted N.I. Act Case No. 122 of 2019 on April 18, 2019 before the Court of the learned Additional Chief Judicial Magistrate, Sealdah. It was only in the immediate shadow of these imminent statutory proceedings, specifically on April 25, 2019, that Opposite Party No. 2 lodged the criminal complaint at Golabari Police Station, alleging cheating, criminal breach of trust, and criminal intimidation under Sections 420, 406, and 506 IPC resulting in

institution of the Golabari P.S. Case No. 148 of 2019 against the petitioner. Although the Opposite Party No. 2 strenuously contends that a formal refund demand notice was issued earlier on February 11, 2019, the sudden transformation of a civil commercial grievance into a penal prosecution right after the initiation of Section 138 proceedings speaks volumes regarding the true intent behind the FIR of the Golabari P.S. Case No. 148 of 2019.

41. This Court is guided by the salutary principles laid down by the Hon'ble Supreme Court regarding malicious counter-blasts and abuse of criminal process. In *Sunil Kumar (supra)*, the Apex Court authoritatively held that an FIR lodged as a retaliatory counter-blast to cheque-bounce proceedings out of personal vendetta constitutes a gross abuse of the process of law and is liable to be quashed.

42. This principle was further underscored in *D.P. Gulati, Manager Accounts, JetKing Infotrain Limited (supra)*, wherein the Hon'ble Supreme Court reiterated that when criminal proceedings are manifestly initiated with an ulterior motive to pressurize an accused and circumvent civil or statutory liabilities, the High Court, exercising its inherent powers, must step in and quash the proceedings. Furthermore, as expounded by the Apex Court in *Mahmood Ali (supra)* to determine whether an FIR is tainted by an ulterior motive of wreaking vengeance, the Court must look beyond the bare text of the complaint into the attending circumstances, the conduct of the parties, and the chronological timeline leading up to its filing.

43. When the timeline of the present case is subjected to this judicial test, it becomes abundantly clear that the criminal complaint was utilized as a tactical shield to counter the statutory pressure of potential prosecution under Section 138 of the N.I. Act. Permitting such a proceeding to continue would subvert the criminal justice system into a tool for coercion and pressure. Accordingly, the third Question is answered in the affirmative in favour of the petitioner, as well.

44. Most crucially, the fourth and final point for determination is related to the assessment of the fundamental limits of the extraordinary and inherent powers vested in this Court under Section 482 of the Code of Criminal Procedure, 1973, when confronted with a complex web of disputed questions of fact in a commercial dispute. This Court is acutely conscious of the well-established parameters governing the exercise of quashing powers under Section 482 Cr.P.C., whereby a High Court must refrain from conducting a mini-trial or a roving inquiry into disputed factual assertions. However, this settled proposition operates hand-in-hand with an equally vital rider that where the foundational allegations fail to *prima facie* disclose the essential ingredients of a criminal offence, or where the proceeding is manifestly attended with *mala fides* and instituted as an instrument of coercion or a retaliatory counter-blast, this Court is duty-bound to step in to prevent an abuse of the process of law.

45. A careful analysis of the rival pleadings and affidavits reveals a sharp, irreconcilable divergence in the factual narratives presented by the parties. On the one hand, the petitioner-landlord vehemently contends

that the factory shed was accepted by the tenants on an "as-is-where-is basis" following thorough inspections, and that extensive flooring work amounting to ₹44.35 lakhs was executed at the explicit verbal request of the Opposite Party No. 2-tenants, thus utilizing the ₹20 lakhs deposited by the said opposite party via a cheque. On the other hand, Opposite Party No. 2 staunchly maintains that inspection was restricted until December 24, 2018, that the premises completely lacked the promised 250 KVA electrical infrastructure and industrial flooring, that formal possession was never handed over, and that the petitioner's flooring narrative is a fabricated afterthought devoid of documentation.

46. In the unique factual matrix of the present case, while the competing claims regarding the physical condition of the factory shed, the exact electrical load capacities, and the execution of flooring work ordinarily bear the character of disputed facts, their evaluation must be contextualized within the broader legal findings arrived at by this Court under Question Nos. 1, 2, and 3. Specifically, this Court has already determined that the dispute is predominantly and exclusively civil in nature, that the simultaneous invocation of Sections 406 and 420 IPC is mutually destructive, and that the criminal complaint is a malicious counter-blast designed to derail the statutory proceedings under Section 138 of the Negotiable Instruments Act.

47. In such a scenario, permitting the criminal trial to proceed would force the petitioner to undergo the rigorous ordeal of a criminal trial over a matter that finds its proper and efficacious remedy within the pending civil adjudication of Money Suit No. 148 of 2019 and the statutory

framework of N.I. Act Case No. 122 of 2019. Accordingly, Question No. 4 is answered by holding that while the factual rivalries regarding infrastructure and flooring would ordinarily necessitate a trial, the overarching civil character of the present dispute, the legal unsustainability of the penal charges, and the malicious counter-blast nature of the FIR render the continuation of the criminal proceeding an absolute abuse of the process of law, thereby warranting interference of this Court under Section 482 Cr.P.C.

48. In view of the detailed discussions, the categorical findings recorded hereinabove on Question Nos. 1 to 4 are:

a. It is conclusively held that the dispute between the parties is predominantly and exclusively civil and commercial in nature, arising out of a failed commercial lease transaction.

b. The simultaneous invocation of Sections 420 and 406 of the Indian Penal Code is legally contradictory and mutually destructive.

c. The criminal proceeding in Golabari P.S. Case No. 148 of 2019 (G.R. Case No. 2138 of 2019) is a retaliatory counter-blast instituted to frustrate the statutory cheque-bounce proceedings initiated under Section 138 of the Negotiable Instruments Act.

49. Consequently, the instant criminal revision application being **C.R.R. No. 4089 of 2022** is **allowed**.

50. The entire criminal proceeding in G.R. Case No. 2138 of 2019, arising out of Golabari Police Station Case No. 148 of 2019, including Charge Sheet No. 149 of 2021 and all consequential orders, pending before the

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Court of the Learned Chief Judicial Magistrate at Howrah, are hereby **quashed and set aside**.

51. It is made clear that observations made in this judgment are strictly confined to the quashing of the criminal proceedings and shall not prejudice or influence the independent adjudication of the pending civil proceedings in Money Suit No. 148 of 2019 or the statutory proceedings in NI Act Case No. 122 of 2019 on their own merits.

52. Connected pending application(s), if any, stands disposed of accordingly.

53. Interim order, if any, stands vacated forthwith.

54. There shall be no order as to costs.

55. Let a copy of this judgment along with the Trial Court Records (T.C.R.) be transmitted down to the learned Trial Court for necessary information and compliance.

56. Case diary, be returned to the Learned Counsel for the State.

57. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)