

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl. M. C. No.03 of 2024

Petitioner : Bijay Chamling

versus

Respondent : State of Sikkim

Application under Section 482 of the
Code of Criminal Procedure, 1973

Appearance

Mr. Eklovy Nagpal, Advocate for the Petitioner.

Mr. Aaroahi Bhalla, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Public Prosecutor, Mr. K. T. Bhutia, Public Prosecutor (Vigilance) and Mr. Yadev Sharma, Additional Public Prosecutor for the Respondent.

Date of Hearing : 06-03-2026
Date of Order : 06-03-2026
Date of Uploading : 06-03-2026

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. Heard Learned Counsel for the parties.
2. The allegation in the FIR bearing No.03/2020, dated 03-01-2020, against the Petitioner is that an advance of ₹ 1,77,00,000/- (Rupees one crore and seventy seven lakhs) only, was made to the Petitioner's firm by the Sikkim State Co-operative Supply and Marketing Federation Limited (hereinafter, the "SIMFED"), for supply of computer sets to various school of the State. The Petitioner supplied 95 computers out of the order for supply of 364 computers. On non-supply of the remaining computers, a legal Notice was sent to the Petitioner's firm to complete the supply or refund the advance amount made to him, along with penal interest. However, despite having received the legal Notice the Petitioner failed to either supply the computer sets

or refund the amount. Hence, the FIR against the Petitioner under Sections 420 and 409 of the Indian Penal Code, 1860.

3. It is submitted by Learned Counsel for the Petitioner that a bare perusal of the FIR would reveal that the case is of a civil nature and the Complainant ought to have filed a civil suit for recovery of money against the Petitioner. That, the FIR was therefore wrongly registered against the Petitioner, before the concerned police station to merely harass and humiliate the Petitioner. The question of the Petitioner trying to cheat the Complainant by committing breach of trust does not arise in any event. Admittedly, the entire supply of the computer sets was not made, only ninety-five computer sets were supplied. It is also an admitted position that the refund demanded by the SIMFED for non-supply of computers was also not made by the Petitioner, nevertheless, the matter does not have a criminal bearing and the FIR deserves to be quashed.

4. Learned Additional Advocate General objecting to the submissions advanced by Learned Counsel for the Petitioner submitted that, the matter squarely falls under the provisions of the criminal law as cited in the FIR. A supplementary Charge-sheet has been filed yesterday before the Learned Trial Court and the matter has been fixed for hearing on Charge. In view of the facts as laid out in the FIR and the Charge-sheet the Petition deserves to be rejected.

5. After giving due consideration to the competing submissions of Learned Counsel for the parties, I deem it relevant to mention here that the Hon'ble Supreme Court has elucidated in

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Rikhab Birani and Another vs. ***State of Uttar Pradesh and Another***¹ the difference between breach of contract and a criminal offence of cheating. Having perused the FIR (*supra*), at this juncture I cannot bring myself to hold that the FIR fails to reveal a *prima facie* case against the Petitioner to enable this Court to exercise its discretion under Section 482 of the Code of Criminal Procedure, 1973. Petition accordingly stands rejected.

(i) However, it is clarified that the Learned Trial Court shall not be prejudiced by the instant Order of this Court during the time of the hearing on Charge and shall arrive at an independent finding based on the submissions advanced before it and the documents on record.

6. Crl. M. C. No.03 of 2024 disposed of.

7. Copy of this Order be transmitted to the Learned Trial Court for information.

(Meenakshi Madan Rai)
Judge
06-03-2026

Approved for reporting : **Yes**

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¹ 2025 SCC OnLine SC 823