

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Cril. Petition No. 12 of 2014

1. SudeepThakore, ex-Vice President, Marketing of M/s Mekaster Engineering Limited, having its registered Office at Plot No. 32, Sector 1, Parwanoo Industrial Estate, Solan District, Himachal Pradesh – 173220, residing at G-101, 1st Floor, Galada Towers, Begumpet, Hyderabad- 500016.

.... Petitioner

- Versus -

1. M/s Coastal Projects Limited, Imphal East, Mantripukhri, Second Floor, near CRPF Camp, Manipur 795001, having its registered Office at 237, 2nd Floor, Bapuji Nagar, Bhubaneswar, Orissa and its Corporate office at Plot No. 303-O, Film Nagar, Jubilee Hills, Hyderabad, Andhra Pradesh- 500033.

Represented by Shaik Moulali, aged about 41 years, S/o John Shab of Coastal Projects Ltd., BikashBhavan, 2nd Floor, flat no. V and VI Palace Compound Agartala- 799001, Tripura now serving as Regional Head (NE).

.... Respondent

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner : Mr. H. Kenajit, Advocate

For the respondent : Mr. T. Rajendra, Sr. Advocate

Date of hearing : **04.04.2024**

Date of order : **14.06.2024**

JUDGEMENT & ORDER
(CAV)

[1] Heard Mr. H. Kenajit, learned counsel appearing for the petitioner and Mr. T. Rajendra, learned sr. counsel appearing for the respondent.

[2] The present petition has been filed under section 482 of the Code of Criminal Procedure 1973 for quashing/ setting aside the impugned order dated 06.05.2014 passed by the Ld. Chief Judicial Magistrate, Imphal East, Manipur in connection with a complaint case which is registered as Cril. (C) Case No. 55 of 2014 (cognizance of offences under section 417, 419, 420 read with section 34 of the IPC is taken) and further proceedings of the said complaint case with the following prayers;

- i. To quash the impugned order dated 06.05.2014 (Annexure-C/5) and further proceedings of the Cril.(C) Case No. 55 of 2014; and
- ii. For passing ex-parte interim order for staying the order dated 06.05.2014 of the Ld. Chief Judicial Magistrate, Imphal East, Manipur and to recall the warrant of arrest issued to the petitioner and also to stay the further proceedings of the Cril. (C) Case No. 55 of 2014 before the Hon'ble Chief Judicial Magistrate, Imphal East, Manipur during the pendency of the present petition.

[3] According to the learned counsel for the petitioner, the Ld. CJM, Imphal East has failed to apply its judicious mind while issuing warrant of arrest against the petitioner/accused person in the complaint case filed by the respondent/complainant which was registered as Cril. (C) Case No. 55 of 2014 (cognizance of offences under section 417, 419, 420 read with section 34 of the IPC) taken against the petitioner. Since then the criminal proceedings against the petitioner is going on in full swing.

[4] Chequered history of the petitioner leading to the filing of this petition u/s 482 of the Criminal Procedure Code, 1973 is as follows:-

As the petitioner was working as a Vice-President, Marketing of M/S Mekaster Engineering Pvt. Limited (in short MEL), of a Company registered under the Company Act, 1956 having its registered Office at Plot No. 32, Sector 1, Parwanoo Industrial Estate, Solan District, Himachal Pradesh- 173220. The petitioner has submitted his resignation on 12-03-2014 which was accepted by the MEL on 23-04-2014.

The respondent company and MEL was having its business relations over a decade for placing orders and MEL was supplying the orders placed by the respondent company. On 07.12.2012, the respondent Company and M/S Mekaster International Private Ltd. (one of the Mekaster Group of Companies) entered into an agreement in Andhra Pradesh for placing a purchase order for the supply of Road Header Machine, Model T 3.2Q to be delivered to its Rangit Hydro Electric Project at Sikkim and an advance payment of Rs. 5 Crore only was made by the respondent company vide Cheque No. 279207 dated 07-06-2011. Further, it was agreed in its agreement that instead of cash refund of Rs. 4.40 Crore, the respondent company agreed to place an order for supply of three (3 Nos.) Shotcrete Machines PM 500 to the Second party.

Again on 20.12.2013, the respondent Company and the MEL entered into an amendment agreement in Andhra Pradesh thereby amending the terms and conditions of the agreement dated 07.12.2012. Original signed copy of the agreement is with the respondent Company.

The respondent filed a complaint case before the Ld. Chief Judicial Magistrate, Imphal East and the Ld. Court took cognizance and registered it as Cril. (C) Case No. 55 of 2014 and issued warrant of arrest against the petitioners vide order dated 06.05.2014.

[5] According to the learned counsel for the petitioner, the Ld. Court of CJM, Imphal East had erred in taking cognizance u/s 417, 419, 420 read with section 34 of the IPC and issued warrant of arrest against the Petitioner without any jurisdiction and evidence that the petitioner had either deceived or cheated on which the complainant is relying that cheating had been caused to him.

[6] The learned counsel for the petitioner further submitted that the respondent/complainant had filed the complaint case before the Ld. CJM, Imphal East for cheating by relying on certain agreement but the said agreement were executed in Andhra Pradesh and the document which the complainant is relying for jurisdiction of the Ld. Court is a purchase order placed by him to one Putzeister Iberica, S.A. Camino de Hormigueras, 173, 28031- Madrid which is not the company of the petitioner.

[7] The learned counsel for the petitioner further submitted that the Ld. Court while taking cognizance, it has recorded statement of 2 (two) witnesses including the complainant and nowhere the witnesses have stated that the petitioner have deceived or cheated him. In spite of wanting more evidence to take cognizance of the complaint, the Ld. Court had taken cognizance under section 417, 419, 420 read with section 34 of the IPC and registered it as a Cril. (C) Case No. 55 of 2014 and issued a warrant of arrest to the petitioner vide order dated 06.02.2014 in a routine manner.

[8] The learned counsel for the petitioner further mentioned that there is no ingredient/ or any act of the petitioner which would make his act liable to book him under the said provision. As the Ld. Court had committed an error in taking cognizance and issuing the warrant of arrest to the petitioner u/s 417, 419, 420 read with section 34 of the IPC. Having no alternative the petitioner has approached this Hon'ble Court to quash/ set aside the impugned

order dated 06.05.2014 passed by the Hon'ble CJM, IE whereby a criminal complaint case is continuing against the petitioner.

[9] The petitioner has filed the present petition on the following grounds;

- a) The impugned order dated 06.05.2014 passed by the Hon'ble CJM, IE is bad in the eyes of law;
- b) The Ld. Court had taken cognizance and issued warrant of arrest under section 417, 419, 420 read with section 34 of the IPC without applying its judicious mind;
- c) The complaint case has no materials to take cognizance u/s 417, 419, 420 read with section 34 of the IPC against the petitioner;
- d) The impugned order dated 06.05.2014 passed by the Hon'ble CJM, IE have help the complainant to harass the petitioner without any valid reason;
- e) The impugned order passed by the CJM, IE is contrary to the letter and spirit of the intention for which the legislature had enacted the IPC;
- f) The complainant had approached the Hon'ble CJM, IE just to harass the petitioner by dragging in criminal case;
- g) The complainant is abusing the process of law to harass and torture the petitioner mentally, physically and financially.

[10] Mr. T. Rajendra, the learned counsel for the respondent filed Counter Affidavit on behalf of the respondent, in that the respondent submitted that "Except those which are specifically admitted therein the Respondent/Complainant denies all the allegations made in the petition filed by the petitioner/accused person.

Brief fact as per the respondent is that the respondent/petitioner made an order for supply of 01 (one) Road Header was placed with M/s Mekaster Engineering Limited (in short MEL) on 22-03-2011, for which advance payment of Rs. 5 Crores

(Rupees five crore) has been made and as per provision in the purchase order, M/s MEL shall take back the machine in case of non-performance of the machine as per the pre-determined norms after installation at the work-site and it was mutually decided that MEL has to refund Rs 4.4 Crores (Rupees four point four crores) on taking back the under-performed machine. He further submit that subsequently under the agreement dated 07.12.2012, the complainant is to place supply order to purchase 03 (three) shotcrete machines from M/s MEL instead of refunding Rs 4.40 Crores which was to be refunded by M/s MEL. As per the agreement, one machine is to be supplied in December, 2012 and two in January, 2013 and that the balance amount of Rs. 2.84 Crores (Rupees two point eight four crore) remains after delivery of 01(one) shotcrete machine.

[11] The learned counsel for the respondent further submitted that after the supply of the first machine, by an agreement dated 20.11.2013, it was agreed mutually to supply two machines by the MEL and a further amount of Rs. 1 (one) Crore only was released by the complainant to MEL and that the delivery schedule of the first unit was within eight weeks on or after the receipt of advance payment from the complainant and the second unit was within eight weeks on or after the receipt of advance payment from the complainant. According to the learned counsel for the respondent, the said approach of the accused was with a criminal mind and with an intention of deceiving the complainant.

[12] The learned counsel for the respondent next submitted that on 20.11.2023 the complainant placed a supply order for two machines to the manufacturer i.e. M/s Putzmeister Iberica, Madrid directly as requested for by the MEL and the accused on their statement that it is required to carry out High Sea Sales to make invoice in favour of the complainant Coastal Projects Limited. Subsequently, on 17-12-2013, the Vice President of MEL namely

Sudeep Thakore informed that the first unit of the shotcrete machine will be delivered by December, 2013 and the second unit will be delivered in January, 2014, but has failed to deliver the machines within the stipulated period.

[13] The learned counsel for the respondent further submitted that finding delay tactics of M/s MEL for delivery of machines and suspicious of the real intention of the MEL on the issue, legal notice was served on 21-03-2014 intimating appropriate legal steps against M/s MEL in case of failure to dispatch 02 (two) shotcrete machines within 7 (seven) days indicating specifically that the legal action to be launched may include criminal prosecution as well as civil suits for which M/s MEL shall be further liable for the cost and consequences of the litigations. But no response was received from Shri Sudeep Thakore, Vice President (Marketing) and also finding the delay tactics of MEL, the complainant company has taken up the matter with the manufacturer directly to ascertain the factual position. The manufacturer M/s. Putzmeister Iberica, by a letter dated 06.08.2014, replied that they have not been informed or involved in any negotiation and discussions that the complainant may have had with the MEL with regard to the requirement of delivery of two machines and that they have not received any payment with regard to the above order. As a result, the complainant has filed the Criminal complaint case against Shri Sudeep Thakore, Vice President of M/s MEL and one other on 06-05-2014 before the Hon'ble Chief Judicial Magistrate, Imphal East, Manipur against which non-bailable warrant was issued by the court on 06-05-2014 by taking statement of the complainant and one witness.

[14] The learned counsel for the respondent further argued/submitted that warrant of arrest was issued not for convicting the accused, but only the first step of the criminal proceeding and due trial of the case by producing evidence by both sides and the accused has enough chance to prove their case. Since

the Chief Judicial Magistrate has got vast/ample power to take cognizance of the offence and accordingly, after following the procedure, the Learned Chief Judicial Magistrate has taken cognizance of the offence and therefore, there is no infirmity in it and there is no necessity to invoke the provisions of Section 482 Cr.P.C to quash the said criminal proceedings initiated by the respondent.

[15] The learned counsel for the respondent further submitted that a person is said to be cheated by another person if he/she by deceiving that person fraudulently and dishonestly induces the person so deceived to deliver any property, to any person or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Further whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed and which is being capable of converted into a valuable security is said to be cheated and dishonestly induces delivery of property. The Petitioner/respondent along with another namely Shri Mohit Khanna are the Vice President and CEO (Chief Executive Officer) of M/s Mekaster Engineering Ltd. The petitioner and the said Mohit Khanna fraudulently and dishonestly induces the complainant to make payment of a big amount running in crores which is morefully explained in the Complaint petition for the supply of the said machines. The Petitioner/respondent and the said Mohit Khanna had the clear intention of deceiving and dishonestly compelling the complainant to make the said payment even though they had the clear intention of not supplying the machines so promised to be

delivered. In fact, the acts of the accused person fulfills the ingredients of the offences for which cognizance was taken.

The learned counsel further mentioned that the supply orders of the said machines are to be delivered at Mantripukhri Imphal within Imphal East District, Manipur. Therefore the act of deception has been undisputedly confirmed as the said machines are not delivered at the said address of Imphal. Therefore the deception by the petitioner and Mohit Khana is a continuing one including at Imphal where the said machines are to be delivered. Being so the Ld. Chief Judicial Magistrate, Imphal East under whose jurisdiction at Mantripukhri the machines have to be delivered have ample jurisdiction to entertain the complaint petition.

[16] The learned counsel for the petitioner further filed Reply affidavit on behalf of the petitioner to the Additional Affidavit filed by the Respondent in which he denies all the allegations/averments made in the additional affidavit except those which are specifically admitted therein and he further contented that the submission of the respondent in the Additional Affidavit is afterthought and making improvement of his case which is not valid in the eyes of law. Accordingly, the present Criminal Petition No. 12 of 2014.

[17] After hearing both the learned counsels at length and on perusal of the materials placed before me, it is seen and emerged the following;

I) The agreement mentioned by the parties were executed between the petitioners' company i.e M/s Mekaster Engineering Limited and the respondents' company i.e M/s Coastal Projects Limited.

II) The company of the petitioner was not made parties in the complaint case.

III) The petitioner was Ex-Vice President of the company but already resigned from his post and the resignation was accepted by the company.

The learned counsel for the petitioner submitted that the allegation against the petitioner in the complaint petition was that he was the Vice President of the company but the mentioned agreements were entered into between the respondent company and petitioner company and all payment have been made by the respondent company to the petitioner company. Further, the learned counsel for the petitioner submitted that instead of filing the criminal proceeding civil case should be filed against the petitioner's company, in the circumstances no case is made out against the petitioner, as such the continuation of the criminal complaint against the petitioner is totally abuse of process of law. In *Sharad Kumar Sanghi Vs Sangit Rane*, (2015) 12 SCC 781, the Hon'ble Supreme Court at para 11 observed that;

"11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. ..."

In this situation it is observed that except for stating that the petitioner had lied to the complainant no details have been mentioned either in the complaint or in the statement given by the said two witnesses made before the learned CJM, Imphal East to attract the criminal jurisdiction for taking cognizance simply recording the statement of the complainant is not enough but there must be some concrete satisfaction of the Court concerned for taking cognizance.

In the circumstances issuance of warrants either bailable or non-bailable with proper scrutiny of mind. The Hon'ble Supreme

Court in Inder Mohan Goswami and another v. State of Uttarachal and others, (2007) 12 SCC 1 at para 54 observed that;

"54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in court, the summon or the bailable warrants should be preferred. The warrants with bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive."

In the present case the learned Chief Judicial Magistrate after taking cognizance issued warrant of arrest against the petitioner and co-accused even though the complainant failed to put forth its case in proper perspective and involved in the said agreement has not been made a party. In the facts and circumstances the CJM, Imphal East ought not to have issued the warrant of arrest.

[18] On further perusal of the materials placed before me, it is evident that the learned Chief Judicial Magistrate, Imphal East when taking cognizance examined two witness namely Shaik Moulali (Complainant) and Prem Kshetrimayum, it is seen and evident that both the witnesses didn't mentioned about the mischief and wrongdoing of the petitioner in the execution of delivery of the materials mentioned in the agreement but only about the company.

[19] Further as per the submissions made by both the learned counsels the relationship between the petitioners' company and respondents' company are doing business for more than a decade the respondent failed to mention the non-execution of agreement between the parties prior to the present agreement. This shows the trust between the two companies in execution of their business.

[20] Out of the three shotcrete machines order, the petitioner company have already supplied one machine, in the process it is found that the petitioner have already resigned from the company

and his resignation was already accepted by the company. Since, the allegation of the complainant was solely on the company not the petitioner individually the complainant atleast should made the petitioners' company a party in the complaint case.

[21] On further perusal of the rival contention made by the parties and with the materials placed before me, it is evident that the litigation if any it should be between the petitioners' company and the respondents' company as the allegation against the petitioners' company is purely on account of breach of contract between the two companies. In *Sarabjit Kaur Vs Station of Punjab and Anr* (2023) 5 SCC 360, the Hon'ble Supreme Court at para 13 observed that;

"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by Respondent 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not meant to be used for settling scores or pressurize parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court."

[22] Learned counsel for the respondent as submitted above narrated/explained about the meaning of cheating and submits that the petitioner cheated the respondents' company by not delivering the agreed material to the respondents' company, but it is admitted position of fact that the petitioner is the EX-Vice President of MEL and the said agreement was executed by the petitioners' company and the respondent and subsequent development between the two

companies, it is the company answerable to the subsequent development post the said agreement, as such, there is no question of cheating committed by the petitioner.

In *Vijay Kumar Ghai Vs State of W.B* (2022) 7 SCC 124, the Hon'ble Supreme Court at para no. 35 to 39 observed that;

"35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

- i) The representation made by the person was false.*
- ii) The accused had prior knowledge that the representation he made was false.*
- iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.*
- iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed. "*

36. As observed and held by this Court in R.K. Vijayasathya Vs. Sudha Seetharam, the ingredients to constitute an offence under Section 420 are as follows:

- i) a person must commit the offence of cheating under Section 415; and*
- ii) the person cheated must be dishonestly induced to:*
 - a) Deliver property to any person; or*
 - b) Make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.*

37. The following observation made by this Court in Uma Shankar Gopalika v. State of Bihar with almost similar facts and circumstances may be relevant to note at this stage: (SCC pp. 338-39. paras 6-7)

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid.... It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on the same

cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."

38. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this Court in Hridaya Ranjan Prasad Verma v. State of Bihar, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by Respondent 2 does not disclose dishonest or fraudulent intention of the appellants.

39. In Vesa Holdings (P) Ltd. v. State of Kerala, this Court made the following observation: (SCC pp. 297-98, para 13)

"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 CrPC to quash the proceedings."

[23] For the aforesaid reasons and in view of the findings of the Hon'ble Supreme Court the facts and circumstances of the present case and it is observed that the complaint made against the petitioner, the complainant failed to make out the offence of cheating against the petitioner.

[24] Since there is no merit in taking cognizance of the offence against the petitioner by the Learned Chief Judicial Magistrate and in view of the liquidation complaint case of the respondent having

become infructuous, the decisions relied upon by the respondent/complainant are not applicable to its case. In any event, the allegations levelled by the respondent in its complaint case can only be ascertained on the basis of the evidence and documents by a Civil Court of the competent jurisdiction and not by way of criminal complaint.

[25] Even if all the allegations made in the complaint are taken to be correct, the case for prosecution under Sections 417, 419, 420 and 34 IPC is not made out against the petitioner herein. To prevent abuse of the process of the Court and to secure the ends of justice, it becomes imperative to quash the Criminal Complaint Case No.55 of 2014 pending on the file of the Chief Judicial Magistrate, Imphal East and any further proceedings emanating therefrom in respect of the petitioner.

[26] In the result,

(a) this Cril. Petition No.12 of 2014 is allowed;

(b) the Criminal Complaint Case No.55 of 2014 pending on the file of the Learned Chief Judicial Magistrate, Imphal East and any further proceedings emanating therefrom in respect of the petitioner is quashed. No costs.

[27] Send an extract copy of this order to the Court of Chief Judicial Magistrate, Imphal East, Manipur.

JUDGE

FR/NFR

Lucy