

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

Present :

The Hon'ble Mr Justice Ajoy Kumar Mukherjee

CRR 24 of 2018

Sk. Abdul Sabir & Anr.

-vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Mrityunjoy Chatterjee, Adv.

For the State : Mr. P.K. Datta, A.P.P.
Mr. Santanu Deb Roy, Adv.
Md. Kutubuddin, Adv.

For the Opposite Party No.2: Mr. Sandip Kundu, Adv.

Heard on : 11.7.2022

Judgment on : 19.07.2022

Ajoy Kumar Mukherjee, J.

1. This revisional application has been preferred for quashing of initiation and continuation of proceedings being G.R. Case No.2508 of 2017 arising out of Balagar P.S. Case No.308 of 2017 dated December 17, 2017 under sections 420/406 of Indian Penal Code (IPC) pending before the court of learned Chief Judicial Magistrate, Hooghly.

2. On December 17, 2017, opposite party no.2 had lodged an FIR, inter alia, alleging that in the year 2017 local farmers of the area stored their potato

packets in the Soumil Cold Storage private Limited in respect of which petitioner no.1 is former director and petitioner no.2 was an employee under petitioner no.1. The opposite party no.2 alleged in the First Information Report that at the time of refund of the potato packets, the cold storage authority refused to return the same. On the basis of said FIR, aforesaid Balagarh P.S. Case No.308 of 2017 dated December 17, 2017 under sections 420/406 IPC was started.

3. Mr Chatterjee, learned lawyer appearing on behalf of the petitioners, submits that present disputes between the parties relate to settlement of account and there is no ingredient of the offence punishable under sections 420 or 406 of IPC. Opposite party no.2 with an ulterior motive and mala fide intention initiated the said criminal proceeding against the petitioners without any cogent reason, although the de facto complainant admitted that some payment was received from the petitioners. Opposite party no.2 in order to create a pressure has initiated the criminal proceeding and tried to give a colour of a criminal offence in a purely civil dispute to wreck vengeance against the petitioners.

4. Mr Chatterjee on behalf of the petitioners further submits that to constitute an offence of cheating, deception and dishonest intention, to do or omit to do the same is required under section 415 IPC which comprises of two elements. In the first place, it is essential that the person who delivers the property should have deceived before he makes the delivery; and in the second place, he should have been induced to do so fraudulently or dishonestly. Moreover, dishonest and fraudulent intention must have been present from the very beginning of the promise or commercial transaction. Mere failure to keep the promise at a subsequent stage does not give rise to any criminal offence i.e. cheating or breach of trust. Guilty mind is an essential ingredient to constitute

offence of cheating and criminal breach of trust. It is necessary, therefore, to show that the offender had cheated or misappropriated in a dishonest manner. Otherwise, relevant sections of IPC would not attract.

5. Mr Chatterjee further submits that even if the allegation made in the FIR is taken to be true at their face value and accepted in their entirety, it does not prima facie constitute any offence or make out any case against the petitioners. He further submits that the disputes between the parties are contractual and/or commercial, regarding the settlement of account and no element of offence of cheating or criminal breach of trust has been disclosed in the FIR. He also submits that no court proceeding be permitted to degenerate into a weapon of harassment or prosecution. Accordingly, the petitioners pray for quashing the entire proceeding.

6. I have gone through copy of the FIR and the documents filed by the petitioners as Annexures. It appears that on December 17, 2017, opposite party no. 2 Basusdeb Ghosh has alleged in the FIR that in the year 2017 he stored about 2500 packets of potato at Soumil Cold Storage, but at the end of the session he did not get back his potato. He further alleged that many other people of the locality who also kept packets of potato in the said cold storage, did not get back their produce and petitioners herein have misappropriated the said potato packets by defrauding the farmers. At the time of loading, the petitioners have instigated them to store potato in their cold storage but ultimately they were deceived. Petitioners have misappropriated about 20,000 bags of potato and he also mentioned the name of some persons in the FIR who also became victim due to such fraud practiced by the petitioners.

7. This FIR was lodged on December 17, 2017. A writ petition was filed on behalf of soumil cold storage before High Court, Calcutta in the early part of

2018. While disposing said writ petition being No.2745(W) of 2018, a co-ordinate Bench of High Court was pleased to pass an order on February 16, 2018 as follows:-

“Considering the submissions as advanced by the learned Advocates for the parties and after perusing the records and the goods, which are perishable in nature and also the period for storing those potatoes has already elapsed on 31st December, 2017 and also considering the submission of Mr. Betal that due to the disturbance created by the local people unless receiver is appointed to hold such auction, the petitioner-company may face chaos and disturbance at the time of holding such auction.

Considering the above discussions, I direct the District Magistrate, Hooghly, the respondent no.5, to hold auction for disposing of the stored potatoes at the petitioner-company’s Cold Storage either by himself or by the Additional District Magistrate, Hooghly and complete the entire auction process by 24th February, 2018 under the supervision of the Court appointed Joint Receivers. Mr. Ratul Biswas and Mr. Shamim Ul Bari, learned Advocates, are hereby appointed by this Court as Joint Receivers.

Court appointed Joint Receivers are directed to deposit the consideration amount of the auction sale proceeds to the learned Registrar General of this Hon’ble High Court by 26th February, 2018. The learned Registrar General of this Hon’ble Court is also directed to put the amount in a nationalized Bank in a short term fixed deposit with option of renewal. The Joint receivers are further directed to maintain the accounts of such auction sale process and submit the same along with report before the Hon’ble Court on the next occasion.

Needless to mention that the District Magistrate, Hooghly and the learned Joint Receivers are at liberty to take assistance of the respondent no. 2, the Superintendent of Police, Hooghly to complete such auction process, as indicated above. The respondent no.2 is directed to render all assistance to the District Magistrate, Hooghly.

The District Magistrate, Hooghly before holding such auction shall publish the date of auction and venue as well as time in Bengali Daily Local Newspaper and also by public announcement through Panchayat. Let this matter appear in the list on 28th February, 2018 at 2p.m.

The remuneration of the learned Joint Receivers has been fixed at 2000G.Ms.each and all the expenses shall be borne by the petitioner at the initial stage. The final remuneration of the Joint Receivers would be paid from the outcome of the sale proceeds.”

8. It further appears that the joint receivers in compliance of High Court’s order submitted a report before the High Court and in the said report they have categorically stated that the auction of said packets of potato has been conducted and one Shib Sankar Roy being the highest bidder deposited a total sum of Rs.1,65,684/- towards sale proceeds for 13,807 packets of potato. The

joint receivers also reported that they have deposited the money before the learned Registrar General pursuant to the order of the writ court, and a copy of challan dated February 28, 2018 and demand draft were annexed as Annexure C to the writ petition.

9. Learned lawyer for the petitioners submits that though after publishing advertisement, the auction sale was conducted, but the complainant did not participate in the auction proceeding.

10. I have also gone through the statements of witnesses recorded by police during investigation, all of which pertains to non-delivery of potato by the petitioners to opposite party no.2 and other persons of the locality who stored potato in the said cold storage allegedly run by the petitioners.

11. Petitioner no.1 submitted that he resigned from the post of directorship on June 27, 2016 and as such he cannot have any responsibility in respect of the incident occurred thereafter. Moreover, the order of the High Court makes it clear that the petitioners have taken due course of action as ordered by the High Court, and the question of misappropriation by the petitioners for their own use in respect of the potato stored by the hirers does not arise. The petitioners have not made any wrongful gain from the said stored packets of potato and as per order of the court, the joint receivers have already deposited the sale proceeds at the office of the Registrar General.

12. Mr Chatterjee appearing for the petitioners further submits that even if the farmers have any grievance regarding payment of sale proceeds in terms of their share, then they can seek relief under section 20A of the West Bengal Cold Storage (Licensing & Regulation) Act, 1966 where the licensing officer is empowered to decide the dispute between the licensee and hirer for payment of

compensation but clothing criminality over such payment dispute is totally uncalled for.

13. From the facts and circumstances of the case, it is clear that FIR was initiated on December 17, 2017 and the High Court interfered with the case on February 16, 2018 but charge-sheet in this case was filed on June 13, 2018, in spite of aforesaid arrangement made by the High Court.

14. Mr P.K. Datta, learned Additional Public Prosecutor appearing for the State, submits that the petitioners never informed the State about the pending proceeding before the High Court, nor about the arrangement made by the High Court for auction sale. The State was also not aware about auction sale of the potato or about compliance of deposit the sale proceeds in the office of the Registrar General. As they are ignorant of all these, investigation culminated in a charge-sheet on June 13, 2018.

15. Considered rival submissions.

16. In **V.Y. Jose and another Vs. State of Gujarat and another** reported in **(2009) 3 SCC 78**, Their Lordship was pleased to observed as follows:-

“21. There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.”

“22. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Penal Code is existence of an (sic fraudulent or dishonest) intention of making initial promise or existence thereof from the very beginning of formation of contract.”

“23. Section 482 of the Code of Criminal Procedure saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.”

“24. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.”

17. Here the petitioners did not have any *mens rea* in committing any kind of offence. From the fact narrated by the petitioners before the High Court in the aforesaid writ proceeding, it is clear that at one point of time the price of potato abnormally came down and for which parties who stored potato in the cold storage, did not come to take back potato from the store and on the contrary, the petitioners herein were in a hurry in getting appropriate direction as the stored potato being perishable in nature required to be disposed of on an urgent basis. They had taken recourse to law by filing the writ petition as the local authorities did not take any action in spite of the petitioners' request.

18. However, as per the order of the High Court, auction sale of the said potato packets was duly conducted in presence of joint receivers and the sale proceeds deposited before the office of the Registrar General; and as such the materials clearly disclose that there is not even a remote chance of conviction of the accused persons, if the present proceeding is allowed to go on. There is no intention to deceive or misappropriate on the part of the petitioners and as such *mens rea* is completely absent in the preset case. Accordingly, allowing the criminal proceeding to continue would result in manifest injustice and would be an abuse of the process of court and would compel the petitioners harassment of litigation for a number of years although no case has been made out against them and therefore the present proceeding is liable to be quashed. In this context it can be referred that relying upon ***R.P. Kapur Vs. State of Punjab*** reported in **AIR 1960 SC 866**, Apex Court was pleased to held where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge, the inherent power under section 482 can be and should be exercised to quash the

proceedings. ***(Preeti Gupta and another Vs. State of Jharkhand and another*** reported in **(2010) 3 CCrLR (SC) 411)**

19. In view of above further proceeding being G.R. Case No.2508 of 2017 arising out of Balagarh P.S. Case No.308 of 2017 dated December 18, 2017 under sections 420/406 IPC pending before the court of learned Chief Judicial Magistrate, Hooghly, is hereby quashed.

20. Accordingly, CRR No.24 of 2018 stands allowed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this judgment, duly applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE,J.)