

CRR 186 of 2005

In Re: - An application under Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of: Rakesh Seth

.... Petitioner

Mr. Shoubhik Mitter
...for the Petitioner

The postal articles served upon the opposite party have come back with an endorsement 'Left'.

Let the affidavit of service filed by the petitioner be kept with the records.

This is an application for quashing of a complaint case being C-5381 of 2004 pending before the Court of the learned Judicial Magistrate, 9th Court, Alipore under Section 420 of the Indian Penal Code, 1860.

Learned advocate appearing for the petitioner submits that a bare perusal of the complaint makes it clear that the condition precedent for filing of an application under Section 156 (3) of the Code of Criminal Procedure, 1973, has not been satisfied since the opposite party has not approached the relevant police station at the first instance which will be apparent from the statements made in paragraph no. 7 of the complaint.

He further submits that the transaction in question is commercial in nature. The dispute arose from a contract. The complainant in the complaint admits that he delivered goods with Rs.3,27,120/- against payment of Rs.5 lakh. He submits that since part delivery of the goods has been admitted by the complainant, the complaint is liable to be quashed.

In support of his submission, he relies upon the judgments reported at **(2005) 10 SCC 336 (Uma Shankar Gopalika Vs. State of Bihar)**, **2017 (4) AICLR 431 (S.C.) (Medmeme, LLC Vs. M/s. Ihorse BPO Solutions Pvt. Ltd.)** and **(2019) 2 SCC 401 (Vinod Natesan Vs. State of Kerala)**.

The relevant part of the complaint is quoted below:-

“That a few month back the above accused person with a solitary motive of cheating ab-initio approached to your petitioner expressing the goodwill and extreme status of the accused person in the business of Distillary product manufacturing and thus induced your petitioner at that relevant time probably in the month of November, 2002 to part with to the tune of Rs. 5,00,000/- (Rupees five lacs) only in the form of Demand Draft in favour of the accused person.

That to bag the initial confidence of the above complainant, the accused person fastly delivered product of Rs. 3,27,120/- (Rupees three lacs twenty seven thousand one hundred twenty) only to your

petitioner but neither has delivered the goods Rs. 1,72,880/- (Rupees one lac seventy two thousand eight hundred eighty) only nor has refunded the amount of Rs. 1,72,880/- (Rupees one lac seventy two thousand eight hundred eighty) only to your petitioner.”

It is a settled law that requisite to constitute an offence under Section 420 of the Indian Penal Code, 1860, is that the intention to cheat must be present at the very inception of the transaction. The complaint itself suggests that the opposite party paid the petitioner a sum of Rs.5 lakh for the supply of goods related to “distillery product manufacturing”. The petitioner in turn delivered the goods worth Rs.3,27,120/- to the opposite party. The complainant alleges the non-supply of goods for the rest of the amount.

In my view the dispute is civil in nature and cannot be converted into a criminal dispute. It cannot be said that there was any dishonesty on the part of the petitioner at the inception.

In that view of the matter, the complaint case being C-5381 of 2004, pending before the learned Judicial Magistrate, 9th Court, Alipore stands quashed.

The revisional application being CRR 186 of 2005 is allowed.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)