

D/L52
10.11.2022
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C.R.R.401 of 2021
With
CRAN 1 of 2021

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

Ramakant Shukla
Versus
The State of West Bengal and another

Mr. Moyukh Mukherjee,
Mr. Abhishek Dutt,
Ms. Rupa Singh.
...for the petitioner.

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.
...for the State.

Mr. Bani Brata Datta,
Mr. Tapan Roy.
..for the opposite party no.2.

The present revisional application has been prayed for quashing of the charges framed in connection with G.R. Case No.480 of 2007 arising out of Hare Street Police Station Case No.82 of 2007 dated 07.03.2007 under Section 420 of the Indian Penal Code presently pending before the learned Metropolitan Magistrate, 5th Court, Calcutta.

Records reflect that although the charge was framed in the year 2014, but till date, no witness has been examined.

The genesis of the case relates to an application under Section 156(3) of the Code of Criminal Procedure which was filed before the learned Chief Metropolitan Magistrate, Calcutta wherein it was alleged that the present petitioner along with the complainant

entered into a business relationship of lottery game and the accused/petitioner took money from the complainant, but in spite of the commitment in sharing the ratio to the extent of 50:50 each, the accused failed to keep up to the commitment. In the said application under Section 156(3), it has been stated that from time to time, amounts were given to the accused and finally the accused cheated the complainant to the tune of Rs.1,50,000/-. Pursuant to such application under Section 156(3) of the Code of Criminal Procedure filed and the direction passed by the learned Magistrate, Hare Street Police Station Case No.82 of 2007 was registered for investigation. On conclusion of investigation, charge-sheet was submitted before the jurisdictional court under Section 420 of the Indian Penal Code.

I find from the report under Section 173 of the Code of Criminal Procedure that one document has been relied upon by the prosecution which is a settlement standing note-sheet between the complainant and the present petitioner. The same is the sole document which the police authorities could lay their hands in course of the investigation, although the six witnesses were relied upon by the prosecution.

Having regard to the fact that the case was instituted in the year 2007, the only documentary evidence which has been relied upon by the prosecution is a settlement standing note-sheet between the parties for proving a case under Section 420 of the Indian Penal Code which reflects that the same relates to subsequent failure of payment and do not satisfy the necessary

ingredients of initial deception as is required under the provisions of Section 420 of the Indian Penal Code.

Further, having regard to the totality of the circumstances under which charge-sheet has been filed and the nature of the facts which has emerged, I am of the opinion that the present case is one of non-payment of money which also do not attract the jurisdiction of the criminal court for continuance of trial under Section 420 of the Indian Penal Code as it is a settled proposition of law that mere breach of agreement cannot be a constituent of cheating for allowing the prosecution to continue.

In view of the aforesaid, I am of the opinion that further continuance of Hare Street Police Station Case No.82 of 2007 dated 07.03.2007 corresponding to G.R. Case No.480 of 2007 pending before the learned Metropolitan Magistrate, 5th Court, Calcutta is unwarranted and, as such, the same is hereby quashed.

Consequently, CRR 401 of 2021 is allowed.

Pending application, if any, is consequently disposed of.

Let the case diary be returned to Mr. Sudip Ghosh, learned advocate appearing for the State.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

