

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 386 of 2008

Ram Bhagat Yadav

-vs.-

The State of West Bengal & Anr.

For the Petitioner : Mr. Vipul Kundalia.

For the State : Mr. Anwar Hossain,
Ms. Manisha Sharma.

Heard on : 05.07.2022, 07.07.2022 & 04.08.2022.

Judgment on : 25.08.2022

Tirthankar Ghosh, J:-

The present revisional application was preferred challenging the proceedings relating to Ram Nagar Police Station case no. 1 of 2008 dated 03.01.2008 (corresponding to GR Case no. 91 of 2008) under Section 406/420/120B of the Indian Penal Code.

The genesis of the case related to an application under Section 156(3) of the Code of Criminal Procedure preferred at the instance of M/s. Jupiter Industries (P) Ltd. against the present petitioner. The allegations made in the said application were to the effect that on or about 15th April, 2007 the accused approached the complainant at his place of business at Falta for purchase of

photocopier machinery. It was represented that he was thickly associated with the market and if the goods are sold to him on 60 days credit he would be able to secure profits for the complainant. On representation 7 separate contracts were entered between the complainant and the accused. It has been contended that as the complainant's unit is situated at SEZ goods can be cleared only upon payment of Customs Duty. The complainant could not arrange payment of Customs Duty for which goods could be taken out from the premises till 10th October, 2007 and as such the sale agreement remained unexecuted. Between 11th October, 2007 and 25th October, 2007 the accused took delivery of 491 photocopier machinery worth Rs.27 lakh on the following dates:

<i>Challan No.</i>	<i>Delivery Date</i>	<i>No. of Pieces</i>
<i>JIPL/07-08/001</i>	<i>11.10.2007</i>	<i>48</i>
<i>JIPL/07-08/002</i>	<i>11.10.2007</i>	<i>18</i>
<i>JIPL/07-08/003</i>	<i>11.10.2007</i>	<i>19</i>
<i>JIPL/07-08/004</i>	<i>12.10.2007</i>	<i>43</i>
<i>JIPL/07-08/005</i>	<i>13.10.2007</i>	<i>42</i>
<i>JIPL/07-08/006</i>	<i>13.10.2007</i>	<i>41</i>
<i>JIPL/07-08/007</i>	<i>17.10.2007</i>	<i>112</i>
<i>JIPL/07-08/008</i>	<i>24.10.2007</i>	<i>112</i>
<i>JIPL/07-08/009</i>	<i>25.10.2007</i>	<i>56</i>

After completion of 30 days the accused persons failed to make any payment in respect of the goods delivered and on 13th December, 2007 accused made a false promise and representation to the complainant that he would make payment of outstanding amount of Rs. 27 lakh and would make further payment of 305 pieces of photocopier machinery valued at Rs.17 lakh if these machinery are delivered to him immediately after Customs clearance at the

delivery gate of the petitioner. Relying upon such representation complainant agreed to deliver the goods and brought the same at the delivery gate. The accused person without making any payment of the consignment attempted to take away the goods with the help of the anti-socials hired by him, however, the complainant could prevent the accused persons and his associates from the implementing such evil design. It is alleged that the accused person took delivery of 491 pieces of photocopier machinery in October, 2007 dishonestly by making a false representation to the complainant which he knew that he would never pay. The accused person as such by his conduct has made himself liable to be punished under Section 420 of the Indian Penal Code and as even after a complaint being lodged with the police station no action was taken, the complainant had no other option except to approach the Court for registration of a case.

Records reflected that on such an application the learned Magistrate on 18.12.2007 was pleased to direct the Officer-in-charge, Ram Nagar Police Station to treat the petition as FIR under Section 165)3) of Code of Criminal Procedure and start an investigation and submit report before the Chief Judicial Magistrate, Alipore. Consequently, Ram Nagar Police Station case no. 01/08 dated 03.01.2008 was registered for investigation under Section 406/420/120B of the Indian Penal Code.

Mr. Vipul Kundalia, learned advocate appearing for the petitioner submitted that even if the allegations made in the FIR are accepted to be true in its entirety the same reflects a commercial transaction and the present case

is for recovery of the dues in respect of the goods supplied which is basically a civil dispute and the provisions of Section 156(3) of Cr.P.C. have been invoked by giving a cloak of criminal proceeding to a civil dispute which is not tenable in the eye of law and is liable to be quashed.

Mr. Anwar Hossain, learned Advocate appearing for the State produced the Case Diary. The Case Diary reflects that except the application under Section 156(3) of Cr.P.C. and the enclosures which are invoices and challans no other materials have been collected.

There is a specific contention in paragraph 8 of the application under Section 156(3) of the Code of Criminal Procedure regarding the payment of outstanding amount. The same reflects the purpose for which the criminal case was initiated. In *Uma Shankar Gopalika –Vs. – State of Bihar & Anr.* reported in (2005) 10 SCC 336 it was held in paragraph 7 is as follows:

“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.”

Having regard to the allegations made in the FIR this Court is of the opinion that the FIR has been instituted for recovery of outstanding payments which cannot be a subject matter of investigation under Sections 420/406 of the Indian Penal Code. The initiation, registration and continuation of the investigation of Ram Nagar Police Station case no. 1 of 2008 dated 03.01.2008 under Section 406/420/120B of the Indian Penal Code is an abuse of the process of law and the same if allowed to continue will bound to cause miscarriage of justice. Accordingly all further proceedings of Ram Nagar Police Station case no. 1 of 2008 dated 03.01.2008 (corresponding to GR Case no. 91 of 2008) is hereby quashed.

Thus CRR 386 of 2008 is allowed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby made absolute.

The Case Diary be returned to the learned Advocate appearing for the State.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)