IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. No. 1993 of 2012
With
IA No. CRAN 1 of 2012 (OLD No. CRAN 3230 of 2012)

Dreamz Collection & Ors.
Vs.
State of West Bengal & Anr.

For the Petitioners: Mr. Satadru Lahiri, Adv.
Mr. Sayan De, Adv.
Mr. Sayan Kanjilal, Adv.

For the State: Mr. Narayan Prasad Agarwala, Adv.
Mr. Pratick Bose, Adv.

For the O.P.No. 2: Md. Farhauddin, Adv.

Heard on : 02.03.2022.

Judgment on: 20.05.2022.

Ananda Kumar Mukherjee, J. :-

1. Instant application under section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, praying for quashing of the proceeding in complaint Case No. C/7014/2010 under section 420 read with section 34 of the Indian Penal Code, 1860, pending before Learned Judicial Magistrate, 8th Court, Alipore, 24th Parganas South.

2. In gist, the fact of the case is that the opposite party no.2 filed a petition of complaint under Section 420/120B/34 of Indian Penal Code against the petitioners and three other persons namely Manoj Kumar Saraf, Radheshayam Saraf and Dev Karan Saraf. The complainant is the authorized representative and husband of Mrs. Sapna Rungta having a business of saree and boutique at Gariahat, Kolkata. Petitioner no.2 is described as a partner of M/S. Dreamz Collection and the other accused persons have been represented as the other partners of M/S Dreamz Collection, having its place of business at 162/2, Agrasen Road, Khalpara Outpost, P.S Siliguri.

3. On the basis of the complaint lodged, a complaint case bearing no.7014/2010 was registered against the petitioners and Dev Karan Saraf under Section 420/120B /34 of IPC before learned Chief Judicial Magistrate, Alipore.

4. The complainant disclosed that petitioner no.2 Babita Safar and the partners of M/S Dreamz Collection approached the wife of the complainant Sapna Rungta, representing that M/S Dreamz Collection as their family business and that her husband, father-in-law and grandfather-in-law are all partners in the business.

5. The accused/petitioners purchased boutiques and sarees from the complainant's wife on cash payment and after a good business relation developed, the accused/petitioners requested the complainant and his wife for extending credit facility for three months and the accused persons purchased huge amount of boutiques and sarees from the complainant and his wife from

31.07.2009 to 22.10.2009, worth Rs.5,48,990/- on invoice. The accused petitioners thereafter did not make payment in spite several demand and did not contact with the complainant and his wife.

6. It is alleged by O.P. no. 2 that the accused persons jointly conspired and cheated Sapna Rungta to the tune of Rs. 5,48,990/- and made a wrongful gain, thereby causing a wrongful loss to the wife of opposite party no.2.

7. A notice was issued by wife of O.P no.2 through their advocate under registered post. On 14.06.2010, all the notices were returned with a remark 'refused'.

8. Ld. Magistrate examined the complainant and his witnesses and issued summons against the accused person under Section 420/34 of the Indian Penal Code. Petitioners on receipt of summons appeared before Ld. Magistrate and were released on bail. The petitioners filed a death certificate of Dev Kumar Saraf who expired during pendency of the case and by an order dated 07.09.2011, ld. Magistrate called for a report regarding veracity of the fact.

9. According to the petitioners there was a business transaction between the complainant and petitioner no.1 which is a proprietorship business and not a partnership business. The complainant used to supply boutiques and sarees to the petitioners on payment of money. During the financial year 2008-09 there was a business transaction between the complainant and M/S Dreamz Collection to the tune of Rs.4,23,820/- and in the financial year 2009-2010 business went up to the extent of Rs. 6,48,315/-. The complainant continued his business transaction with petitioner no.1 even after the alleged default and

delay in making payment. According to the petitioners there is a continuous commercial transaction between the complainant and petitioner no.1 in support of which documents has been placed as Annexure 'B'.

10. It is urged by the petitioners that complainant raised bills which were exaggerated and the invoices do not have any relation to saree and boutique supplied by him. The petitioners also have dispute regarding quality of boutiques supplied by the complainant. It is the case of the petitioner that there is continuous commercial transaction between the petitioners and the complainant and there is no occasion for making any wrongful gain. Furthermore, there is no allegation that the petitioner from the very inception bore any intention of not paying to the complainant.

11. The petitioners has sought for quashing of the complaint case on the grounds that the ld. Magistrate failed to appreciate the fact that the petition of complaint on its face value did not prima facie make out any offence of cheating against the petitioner and that the offence of cheating which invloves an intention to deception from the very inception cannot be culled out and mere non-payment of any part of the dues did not make out an offence of cheating and would amount to breach of contract. It has been strenuously argued that though the course of a civil remedy was open to O.P. no. 2, he has filed this criminal case only to create pressure upon the petitioners and stigmatize them. Therefore, continuation of this proceeding against the petitioners amounts to an abuse of the process of court and for ends of justice

the complaint against the petitioners is liable to the quashed and orders passed by learned Magistrate be set aside.

12. During pendency of the revisional application petitioner no.2 informed that petitioner no.3 and 4 have expired. Accordingly their name were expunged from the revisional application.

13. Ld. Advocate for the petitioners argued that there have been several commercial transactions between the petitioners and the complainant and in support thereof the petitioner produced some bank statements of M/S Dreamz Collection, issued by Axis Bank at Siliguri. The accounts reveal that cheques were issued in favour of Sapna Rungta and also in favour of Sapna Designer Studio and Sapna Designer. The cheques appeared to have been issued on several dates including 01.08.2009, 11.08.2009, 31.08.2009, 01.09.2009, 04.09.2009, 13.10.2009, 17.12.2009 and 27.01.2010.

14. It is argued that if there is any default in payment arising out of such business transaction, opposite party no.2 can take recourse to civil remedies and mere default in payment in course of transaction would not amount to commission of any offence of cheating. It is argued that in order to attract the offence of cheating defined in Section 415 of the Indian Penal Code, the complainant has to prima facie establish that the petitioners fraudulently and dishonestly induced the complainant or Sapna Rungta, his wife to deliver goods to them without having any intention to pay the complainant's wife from the very beginning and cause wrongful loss to them. In support of his argument ld. Advocate for the complainant relied upon a judicial authority in

the case of **Anil Mahajan Vs. Bhor Industries Limited.; 2005 (10) SCC 228,** where the ratio of the decision is that fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction to cheat. Mere failure to keep the promise at a subsequent stage would not give rise to the offence of cheating. It was held that, a distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct was not the sole test. It was held that mere breach of contract cannot give rise to a criminal prosecution for cheating unless the fraudulent intention is shown at the beginning of the transaction. Therefore the substance of the complaint is to be seen.

15. Reliance has been placed upon another decision of the Hon'ble Supreme Court, in **Hotline Teletubes and Components Limited and others Vs. State of Bihar and another; (2005) 10 SCC 261**, where it was held by the Hon'ble Court that there was no whisper in the complaint that at the very inception of the contract between the parties, there was an intention to cheat. It appeared from the bare perusal of the compliant that it was a case of a pure civil liability and no criminal offence was disclosed, much less offence under section 406 or 420 IPC. It was further held that so far as the High Court is concerned, it had not considered that aspect of the matter, to have refused to quash the prosecution, observing that it was a fit case where party should take steps for settlements.

16. Ld. Advocate for the petitioners alos relied upon a decision in the case of **Dalip Kaur and others Vs. Jagnar Singh and Anr.; (2009)14 SCC 696,** wherein it was held that fraudulent and dishonest intention must exists from the very inception when the promise or representation was made. Non-refunding of amount advanced simply results in a breach of contract, and did not constitute cheating or criminal breach of trust.

17. Reliance was further placed by learned advocate for the petitioner on the decisions in the case of **Alpic Finance Limited Vs. P. Sadasivan and another; (2001) 3 SCC 513,** where it was held that the complaint must disclose essential ingredient of the offence.

18. Drawing reliance upon the ratio of the above decisions and the facts and circumstances of the case, it is argued by learned advocate for the petitioners that the complaint lodged by O.P. No 2 is liable to be quashed as the same does not disclosed any offence of cheating against the petitioner. It is submitted that M/S Dreamz Collection has been continuing business of saree and boutique and they had purchased goods from the complainant / O.P No. 2 on cash and credit facility. Several payments have been made by the petitioner which are reflected from the statement of the bank accounts. Therefore, there is no material to indicate that the petitioners from the very inception had taken delivery of goods from the complainant without payment to deceive her and make wrongful gain. In case there is any outstanding dues against the petitioners the complainant can recover the same through civil suit. It is urged

that the complaint does not disclose the ingredient of offence of cheating and is liable to be quashed.

19. In reply learned advocate for opposite party no. 2 contended that the petitioners on representing themselves to be partners of M/S Dreamz Collection, Siliguri held themselves jointly liable for making payment against delivery of goods. Initially the petitioners made payment in cash and induced opposite party no. 2 to deliver goods consisting of sarees and boutiques to the petitioner firm on invoice but after receipt of the goods they have not made payment. It is argued that the petitioner had borne an intention to cheat the complainant of a huge amount of Rs.5, 48,990/-. Therefore, the revisional application filed by the petitioner has no merit and the same is liable to be dismissed. In support of his argument learned advocate for opposite party no.2 has placed reliance upon a few judicial authorities. In the case of **Priti Saraf and Another Vs. State of NCT of Delhi and Another; (CRR Appeal No. 296 of 2021) Supreme Court,** it was held that simply because there is a remedy provided for breach of contract or arbitral proceedings initiated as the instance of the appellants, it does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of court for exercising inherent powers of High Court under section 482 of Cr. P.C for quashing such proceedings.

20. Learned advocate for opposite party no.2 buttressed his argument relying upon the decisions in the case of **Medchl Chemicals and Pharma Limited (P**

Limited) Vs. biological E. Limited and others; (2000) 3 SCC cases 296, where it was laid down, “Mere fact that the offence was committed during the course of commercial transaction by itself is not sufficient to quash the complaint. For quashing the complaint court has to see whether on the fact situation ‘civil profile’ outweighs the ‘criminal outfit’.”

21. Learned advocate for the State/ opposite party no. 1 submitted that the materials available from the facts of the case prima facie disclose an offence under section 420 of the Indian Penal Code against the petitioners and learned Magistrate has committed no error in taking cognizance of the offence.

22. Having considered the rival contentions in the light of the arguments advanced by learned advocate for the petitioner and opposite party no. 1 and 2, it is worth noting that there are some admitted facts in this case. It is undisputed that the petitioner no. 2 runs a boutique business under the name and style of M/S Dreamz Collection at Siliguri. It is also admitted by the petitioner that she has business transaction with opposite party no.2 and she had purchased sarees and boutiques material from the complainant/opposite party no.2 under credit facility and an outstanding amount was payable on the basis of invoice. In the petition of complaint lodged by opposite party no. 2. It has been alleged that on the request of the accused persons, the petitioners were permitted to purchased boutiques and sarees from the complainant on credit facility for three months, between 31.3.2009 to 22.10.2010, amounting to Rs. 5, 48,990/- but the said amount was not paid on expiry of the period. It

is alleged that a notice was issued to the accused person under registered post with AD on 14.06.2010 but the same were returned as refused.

23. On perusal of the documents produced by the petitioner it appears that some of the documents relate to Axis bank's accounts of M/S Dreamz Collection situated at 126/2 Agrosen Road, Siliguri. Entries in Bank account on different dates indicate that cheques drawn on that account till 27.1.2010 were encashed on behalf of Sapna Designer Studio. Several other transactions through that account were made whereby different amounts were encashed by Sapna Designer Studio and Sapna Rungta between 31.7.2009 to 21.10.2009 and even beyond such date. These documents of accounts of Axis bank produced and annexed as 'B' with the revisional application are of sterling quality and the same cannot be brushed away by any of the parties.

24. It would emerge from such relevant facts that there was essentially a life and continuing business transaction between the petitioner and opposite party no. 2/complainant even beyond 22.10.2009. The petitioner/accused had made payments to Sapna Rungta at the instance of whom the case has been filed. The existence of such commercial transactions between the petitioner and the complainant dislodge the allegation of the complainant/opposite party no.2 that the petitioners from the very inception intended to deceive the complainant by inducing them to deliver the boutique and saree materials on credit or did not have the intention to pay for the goods. Petitioner has also produced a certificate of enlistment of the business, M/S Dreamz Collection issued by Siliguri Municipal Corporation where from it appears that petitioner

no. 2 Babita Saraf is the proprietor of the business and it is not a partnership business. On close inspection of the documents it appears that the same was issued in the year 2011 and 2012. Since the documents relating to certificate of enlistment are not contemporaneous to the alleged transaction between July 2009 to October 2009, I do not place reliance upon such documents.

25. **In State of Haryana Vs. Bhojan Lal; (1992 SCC (cri) 426),** the broad contours and parameters laid down as guidelines for determining the scope and ambit of exercising inherent jurisdiction of the High Court under section 482 of Cr. P.C are set out as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised."

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

26. It may be deduced from such guiding principal that where the allegation in the First Information Report and other materials accompanying the complaint are taken on their face value and accepted in their entirety do not prima facie constitute an offence or make out the case against the accused, then such complaint is liable to be quashed under the inherent power under section 482 of Cr. P.C.

27. In the instant case learned advocate for opposite party no. 2/complainant placed relied upon the decision in **Medchl Chemicals and Pharma Limited (P Limited) Vs. Biological E. Limited and others; (2000) 3 SCC cases 296**, where it was held that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, court

should not quashed the complaint but if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, court should not hesitate to quashed the complaint. It was laid down that court's approach should, however, be very circumspect, cautious and carefully and mere fact that the offence was committed during the course of commercial transactions by itself was not sufficient to quash the complaint. For quashing the complaint court has to see whether on the facts situation 'civil profile' outweighs 'criminal outfit'. Petitioners' activity is based upon a business transaction and has not cropped up in isolation for the purpose of cheating or defrauding the complainant. Circumstances are rife to indicate that there was no initial deception as the parties had been conducting the business for quite some time past and the petitioner has made payment to opposite party no. 2 through the bank account run in the name of M/S Dreamz Collection with Axis bank at Radhbazer, SF Road, Siliguri during and even after the period of default in making payment. In this matter petitioners placed reliance upon the ratio of **Anil Mahajan Vs. Bhor Industries Limited.; 2005 (10) SCC 228,** where it was laid down that mere use of the words cheating in the complaint would not be sufficient but substance of complaint has to be seen to ascertain if the dispute is related to a civil case of breach of contract or a criminal case of cheating. On a close reading of the contents of the complaint lodged by Ajoy Kumar Rungta/opposite party no.2. it is evident that the accused/petitioners were actually conducting a business and they had purchased goods from the complainant on cash and on credit. Due to non-payment of Rs. 5,48,990/-, the consideration price of such goods, the complainant's wife issued a notice to petitioners through her advocate under registered post which is said to have returned with remark 'refuse'. On a reading of the complaint it only appears to me that M/S Dreamz Collection had a business transaction with the complainant and his wife. The legal notice issued by the Sapna Rungta's Advocate for non-payment would call for a legal action for a breach of contract, for no legal notice is pre requisite for a criminal case. The opposite party/complainant was not taken on surprise when such amounts fell due and this led to issuance of a notice to the petitioners, obviously demanding payment of the outstanding dues. In view of such facts and circumstances I am of the considered opinion that the petition of complaint and the attending facts and circumstances do not lead to a irresistible conclusion that prima facie a case of cheating would lie against the petitioners. It is found from the Bank Accounts statements which are of sterling quality that the petitioners have made payments to Sapna Rungta related to her transaction with M/S Dreamz Collection. Dishonesty is a vice associated with the offence of cheating and a dishonest person cannot be said to be partially dishonest. Therefore, the petitioner who made payments to Sapna Rungta even after the expiry of specified period of credit facility, cannot be faulted with the vice of dishonesty. I therefore hold that the petition of complaint on its face value and the backdrop of facts and circumstances of the case do not disclose an offence under section 420 of IPC against the petitioners. Non-payment of the considering money can at best constitute a breach of contract for which notice was served. Therefore any further continuation of the complaint case would amount to an abuse of the process of court. Consequently, for the ends of justice the impugned complaint and the orders passed in Case No. C/7014/2010 are liable to be quashed by invoking jurisdiction vested under section 482 of Cr. P.C.

28. Accordingly, the complaint case bearing no. C/7014 of 2010 pending before Learned Judicial Magistrate, 8th Court, Alipore and all orders passed in connection with the proceeding are quashed. The revisional application is allowed.

29. Interim order if any stands vacated. Pending applications if any are disposed of. Let a copy of this judgment be communicated to Learned Judicial Magistrate, 8th Court, Alipore, 24th Parganas South, for information.

30. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)