

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

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. 2226 of 2014

Munir Ahmed Farooqui

Vs.

The State of West Bengal & Anr.

For the Petitioner:

Mr. Amarta Ghosh, Adv.
Mr. Pran Gopal Das, Adv.
Mr. Sanat Kr. Das, Adv.
Mr. Sujan Chatterjee, Adv.

For the State/O.P. No.1:

Mr. Imran Ali, Adv.
Ms. Debajni Sahu, Adv.

For the O.P. No.2:

Mr. Javed K. Sanwarwala, Adv.

Heard on :

05.04.2022.

Judgment on:

30.06.2022.

Ananda Kumar Mukherjee, J. :-

1. Petitioner has filed this revisional application under section 482 read with section 401 of the Code of Criminal Procedure, 1973, praying for quashing of the proceeding in G.R. Case No. 2770 of 2007, corresponding to Bowbazar Police Station Case No. 406 of 2007 dated 21.11.2007 under section 420/120B of the Indian Penal Code, pending before the Court of Learned Metropolitan Magistrate, Third Court, Kolkata.

2. In brief, the facts leading to filing of this application is that Imam Hossain, Opposite Party No. 2 herein lodged a complaint before Bowbazar Police Station on 6.7.2007 and address to the Deputy Commissioner of Police Detective Department Lalbazar, Kolkata, which gave rise to Bowbazar Police Station G.D Case No. 406 dated 21.11.2007 under section 420/120B of IPC.

3. The opposite party in his complaint alleged that on 5.1.2002 and onwards, the accused persons namely Munir Ahmed Farooqui and Md. Farooqui entered into a criminal conspiracy and induced the complainant with false promise of entering into a partnership business and proposed to give him 50% share in a manufacturing unit of PVC footwear. Relying on such representation of the accused persons, the complainant paid Rs. 20,00,000/- in cash to accused Munir Ahmed Farooqui in two installments of Rs. 10,00,000/- each. However, the accused persons after starting the business did not enter into any partnership agreement with the complainant and did not pay him any share of profit. Subsequently, accused petitioner admitted that he receive a total sum of Rs. 20,00,000/- from the complainant and promised to pay him a compensation of Rs. 12,000/- per month on the whole amount until he repaid Rs. 20,00,000/- to the de-facto complainant. Even after entering into an agreement on 16.3.2005, the accused/petitioner did not make any payment and thereby the accused persons cheated the complainant by such inducement to part with his money.

4. After investigation police submitted charge sheet against the accused petitioner under section 420 of IPC. Learned Magistrate took cognizance of the

offence. The petitioner/accused assailed the proceedings by filing this revisional application contending therein that Opposite Party No. 2 verbally agreed with the petitioner in December, 2001 to set up a manufacturing unit of PVC footwear and petitioner would have 50% share in the business. They also agreed that the unit would be set up in the name and style M/s. Janata Plastic Industries. Accordingly, the proposed manufacturing unit was set up in the first week of July 2002 and started functioning successfully. In course of time it appear that Opposite Party No. 2/complainant was not taking part in the day to day affairs of the business and ultimately the parties decided to part and Opposite Party No. 2 agreed not to claim any right over the said business in future. On 16.3.2005 petitioner and Opposite Party No. 2 entered into an agreement whereby the petitioner bound himself to pay a sum of Rs. 12,000/- according to English calendar months to the opposite party no. 2 towards compensation till the total amount of Rs. 20,00,000/- was repaid.

5. In furtherance of the agreement the petitioner paid Rs. 12,000/- per month to Opposite Party No.2 during the period from April 2005 to August 2005 and paid Rs. 20,00,000/- on 7.5.2005 on issuance of receipt. It was also agreed that in default of payment of the compensation of Rs. 12,000/- for two consecutive months, Opposite Party No. 2 shall have the right to sue the petitioner, for recovery of the said full amount of Rs. 20,00,000/- and also for handing over the business firm/factory and the business premises together with all fittings, fixtures and machineries to Opposite Party No.2 in the court of law.

6. The petitioner has also contended that after August 2005 the opposite party refused to accept the compensation amount and pressurized the petitioner to pay the entire amount of Rs. 20,00,000/- immediately. It is the case of the petitioner that he paid five installments of Rs. 12,000 per month from April 2005 to August 2005 and further an amount of Rs. 20,00,000/- on 7.5.2005. Due to financial difficulties the petitioner was unable to pay the entire dues to Opposite Party No.2 and requested him to receive the amount as per terms of the agreement but he flatly denied to accept the proposal of the petitioner.

7. It is contended on behalf of the petitioner that the transaction between him and the opposite party was a contract and the inability of the petitioner in repaying the compensation amount is a breach of contract and does not give rise to an offence of cheating, as there was no deception on his part from the very inception. It is urged that the offence under section 420 of Indian Penal Code would not be attracted against the petitioner as the transaction is purely a civil dispute for which the remedy lies in the civil court.

8. The petitioner further urged that the complaint has been lodged by Opposite Party No. 2 with an ulterior motive to take vengeance on the petitioner and for the purpose of harassing him. The petitioner therefore prayed for quashing of the proceedings on the grounds inter alia as follows:

- (i) The impugned proceeding is a gross abuse of the process of court which amounts to harass him and the same is liable to be quashed.
- (ii) It is a settled law that every breach of contract would not give rise to an offence of cheating and only those cases where there is any

deception at the very inception of the Act, such acts would amount to cheating. According to the petitioner, present case is purely a civil dispute between the parties for which remedy lies in the civil court.

- (iii) The proceeding has been initiated with malaises motive and mala fide object due to grudge.
- (iv) It is expedient in the interest of justice to quash the impugned proceeding forthwith.

9. Learned advocate for the petitioner argued that the petitioner and opposite party entered into an agreement for repayment of the loan amount along with compensation at the rate of Rs. 12,000/- per month. The petitioner and the opposite party initially agreed to run a business of manufacturing unit of PVC footwear for which they invested money and Opposite Party No. 2 paid Rs. 20,00,000/-. There was no intention on the part of the petitioner to cheat the opposite party and this would be apparent from the conduct of the petitioner who utilized the fund for setting up a manufacturing unit of PVC footwear by the name of M/s. Janata Plastic Industries in the first week of July, 2002. The opposite party/complainant did not show his interest to participate in the business and was reluctant to actively involve himself in the affairs of the business. Ultimately the Opposite Party No. 2 expressed his intention to part his way and the petitioner agreed to return the money invested by the opposite party.

10. Learned advocate for the petitioner asserted that the petitioner entered into an agreement with Opposite Party No.2 on 16.3.2005 and paid Rs. 12,000/- per month as compensation for five months from April 2005 to

August 2005 and also paid Rs. 200,000/- on 7.5.2005. It is contended that in course of investigation police has seized the receipts showing payment. Learned advocate urged that if it was a case of deception then the petitioner would not have made any payment of compensation to the opposite party. It is argued that the transaction between the petitioner and the complainant arose out of a contract and at best there has been a breach of contract due to inability in making repayment of the money in time. It is argued that non-payment of some installments on the basis of the agreement does not give rise to any offence of cheating. It is contended that the complainant/ opposite party should have proceeded in the civil court for enforcement of the agreement and no criminal proceeding would lie against the petitioner.

11. It is argued that continuation of the criminal case against the petitioner under such circumstances is a gross abuse of the process of court and the proceeding is liable to be quashed.

12. It is argued on behalf of the petitioner that there has been an inordinate and unexplained delay on the part of the complainant in lodging the FIR which strikes at the root of the prosecution case for not taking any action for such a long time. To substantiate his case reliance has been placed in the case of **Kishan Singh Vs. Gurpal Singh and Ors; (2010) 8 SCC 775**, where it is held as follows:

“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not

make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. [vide: Sahib Singh Vs. State of Haryana, AIR 1997 SC 3247].

22. *In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case.”*

13. The other contention of the petition is that the complaint does not disclose an offence under section 420 of IPC. To attract the offence under section 420 of IPC the ingredients of the offence should be conspicuously evident otherwise allowing such proceeding would result in abuse of the process. In support of his argument learned Advocate relied upon a decision in the case of **Vijaya Rao Vs. State of Rajasthan and Ors; 2006 (1) ACR 901 (SC)**, where it is laid down as follows:

“5. Except using the expressions “fraudulent misappropriation” and “mala fide intention”, the allegations in the complaint do not at all disclose as to how the Appellant can be found guilty of the offence under Section 420, IPC. The ingredients constituting Section 420 are conspicuously lacking in the complaint. All the Courts have failed to address themselves to the crucial question whether as far as the Appellant is concerned any offence under Section 420 or for that matter, any offence under Section 409 has been committed. Even going by the allegations in the complaint, allowing the criminal proceedings to go on against the Appellant, would result in abuse of the process of the court. Hence, the proceedings in Complaint Case No. 10 of 2000 on the file of the Chief Judicial Magistrate, Sikar, are quashed as against the Appellant. The appeal is allowed accordingly.”

14. With reference to the contention of the petitioner that the dispute involving the parties is civil in nature and criminal proceeding is an abuse of the process of court, learned Advocate sought to fortify his argument, by citing the decision in the case of **Mitesh Kumar J. Sha Vs. The State of Karnataka and Ors; 2022 Cr LJ. 231**, where the Hon’ble Supreme Court held that,

“41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.7. MANU/SC/3152/2006 : (2006) 6 SCC 736, as under :

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

15. Learned advocate for the Opposite Party No. 2 in reply argued that petitioner and his father Md. Farooqui induced the Opposite Party No.2 to enter into a partnership business for starting a manufacturing unit of PVC footwear. He paid Rs. 10,00,000/- each in two installments and asked for receipt. After spending some time on various pretext no receipt was granted to Opposite Party No.2. The petitioner/ accused did not enter into any partnership agreement with him as proposed and did not make any payment of profit nor did he repay the money. Land was purchased in the name of the petitioner and his wife though initially it was agreed that land would be purchased in the name of the complainant. Learned advocate for Opposite Party No. 2 argued that from the very inception the petitioner had the intention to deceive the complainant and make wrongful gain of the money paid by him. The petitioner wilfully kept the Opposite Party No.2 away from the business. After entering into an agreement to repay the sum, the petitioner further deceived the Opposite Party No.2 by not paying the amount. It is strenuously argued on behalf of the Opposite Party No. 2 that in order to cover up the misdeeds and to hoodwink the complainant, the petitioner entered into an agreement assuring him of repayment but his object was not to make any

payment and have wrongfully gained from the complainant. Under such circumstances the transaction cannot be treated as a civil dispute or a breach of contract but the same amounts to an offence of cheating. It is argued that it is a continuing offence and on detecting the fraudulent intention of the petitioner, the FIR has been lodged. Therefore the circumstances will explain that the case of the Opposite Party No.2 is not liable to be defeated on the ground of delay.

16. Learned advocate for the State strongly opposed the prayer for quashing the proceeding and argued that from the very inception the petitioner induced the complainant to enter into a partnership business with him and invest large amount of money but after passage of time, the conduct of the petitioner would reveal that he did not have any intention to honor such proposal and he did not enter into any partnership agreement with the complainant for the business after having received Rs. 20,00,000/-. Referring to the contents of the C.D learned advocate for the State submitted that current account was run by the petitioner and his father at Allahabad Bank in respect of M/s. Janata Shoe Stores. Opposite Party No.2 does not figure as any of the operators of the bank account. It is also pointed out that though petitioner has claimed that he has paid five monthly installments of compensation of Rs. 12,000/- each for April 2005 to August 2005 and another amount of Rs. 20,00,000/- on 7.5.2022, the petitioner has handed over only four receipts showing payment of Rs.12,000/- which are dated 5.4.2005, 5.5.2005, 5.7.2005 and 5.8.2005. It is argued that even regarding repayment, the conduct of the petitioner is deceptive. Had he

paid Rs. 2,00,000/- on 7.5.2005, he would have produced the receipt before the Investigating Officer. Learned advocate for the State urged that the ingredients of the offence are prima facie made out and there is strong incriminating material against the petitioner, as such the prayer for quashing of the proceeding is not justified.

17. Having considered the arguments advanced on behalf of the petitioner, as well as the Opposite Party No.1/State and Opposite Party No.2/Complainant and in the light of the facts of the case and the materials in the C.D, it appears that the transaction was initiated in the year 2002 when the complainant was induced by the petitioner to part with Rs. 20,00,000/- on a proposal of starting a partnership business. The complainant was promised to have 50% share in the business which was to be set up by the name and style of M/s. Janata Plastic Industries. According to the petitioner the business was set up in July 2002 and its started running successfully but no partnership deed was executed by the petitioner with the complainant to involve him in the business. The alleged deception by the petitioner is apparent from the fact that having received the money, he did not execute any instrument with the complainant securing his investment. After passage of three years the petitioner entered into an agreement with the complainant on 16.3.2005 assuring to compensate him at the rate of Rs. 12,000/- per month until he could repay the sum of Rs. 20,00,000/- which was received by him. It can be assumed from such conduct that the de facto complainant had waited for being inducted in the partnership business but with time understood that the intention of the petitioner was not

consistent to his proposal and promise. When he discovered the deception, the FIR was lodged. Therefore the delay has been explained from the attending circumstances. In such view of the matter the decision relied on by the petitioner seeking quashing of the proceeding on the ground of delay in lodging FIR is not applicable to this case.

18. The investigation of the case reveals that only four monthly compensation amounts were paid by the petitioner which is only a figment of the large amount of money received by the petitioner. The petitioner stated that Opposite Party No. 2 was disinclined to receive the compensation amount and create pressure upon him to repay the entire amount at one time. In support of such claim the petitioner has failed to produce any document to show that he had tendered the amount to Opposite Party No. 2 or the sum was refused. It is only after waiting for two more years. Opposite Party No. 2 lodged the complaint in this case. On completion of investigation charge sheet has been submitted against the petitioner on the basis of the materials in C.D. The ingredients of the offence under section 420 of the Indian Penal Code are therefore attracted against the accused person.

19. Some defence has been raised by the petitioner in his application trying to project that the transaction was a breach of contract between him and the complainant which amounts to a civil dispute. In my considered view there are glaring facts that the complainant was left out from the proposed partnership business and payments were not made despite receipt of money by the petitioner from him. The materials which have surfaced from investigation

brings out circumstances of intentional deception and deprivation of the opposite party by the petitioner. The ingredients of offence under Section 420 of IPC are available. In such cases the de facto complainant could have approached the civil court for his relief but it cannot be said that the criminal proceeding is misconceived or unwarranted. I do not subscribe the argument advanced on behalf of the petitioner that he Opposite Party No.2 has cloaked a civil dispute with the robe of a criminal dispute and hold that it is a fit case where the petitioner should face the trial on the charges which transpire against him. The decisions relied on this point is distinguishable from the facts of the present case and has no application to the case under consideration. In this context reliance can be placed on the decision of the Hon'ble Supreme Court in the case of State of **Orissa Vs. Debendra Nath Padhi; (2005) 1 SCC 566**, where it has been laid down that at the stage of framing charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge and at the stage of framing of charge the defence of the accused cannot be put forth. The defence raised by the petitioner herein are disputed facts which are to be considered at the stage of trial during evidence of the parties. Therefore the prayer for quashing of the proceeding is not found tenable.

20. In view of the materials available in the Case Diary and the facts and circumstances of the case I do not find petitioner's prayer convincing for quashing of the impugned proceeding. The revisional application is therefore dismissed on contest.

21. Interim order stands vacated. Copy of the Case Diary be returned to learned advocate for the State.
22. Connected applications are also disposed of.
23. Let a copy of this Judgment be sent to Learned Metropolitan Magistrate, 3rd Court, for information with a direction to expedite the trial of the case. Learned Magistrate shall arrive at an independent finding without being influenced by the foregoing observations in this Judgment.
24. Urgent Photostat certified copy of this Judgment, be supplied to the parties if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)