

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 2928 of 2018****IN THE MATTER OF****Debajit Pradhan****Vs.****The State of West Bengal & Anr.****For the petitioner : Mr. Jayanta Samanta, Adv.,****Ms. K. Samanta, Adv.****For the State : Mr. Narayan Prasad Agarwal, Adv.,****Mr. Pratick Bose, Adv.,****Judgment on : 12.12.2022****Subhendu Samanta, J.**

This is an application U/s 482 read with Section 401 of the Code of Criminal Procedure for quashing of a proceeding arising out of Bidhannagar Police Station case No. 68 of 2016 dated 06.04.2016 U/s 420/406 of the IPC giving rise to GR Case No. 283 of 2016 pending before the Learned Additional Chief Judicial Magistrate at Bidhannagar North 24 Parganas.

The brief fact of the case is that the predecessor of the petitioner entered into a leave and licence agreement with the private opposite Party No. 2 (de facto complainant) permitted him to use a portion of ground floor of the residential premises on rent, firstly for a period of 11 months and thereafter it was extended time to time. The said predecessor of the

petitioner died and the property was devolved upon the present petitioner. The opposite party No. 2 had deposited Rs. One lakh forty four thousand as interest free security deposit with the predecessor of the petitioner at time of taking possession. It was agreed that security deposit shall be refunded to the de facto at the time of vacating the rented premises. The opposite party No. 2 vacated the residential portion but the petitioner did not return the security deposit. The opposite party No. 2 thus filed a written complaint with the Bidhannagar Police Station and the instant case was initiated. Investigation of the police is ended in charge sheet against the present petitioner U/s 420/406 IPC.

Hence this revision for quashing the Criminal Proceeding.

Learned Advocate for the petitioner submitted before this court that the proceeding pending before the Learned Magistrate cannot be allowed to be continued. The opposite party No. 2 has violated the terms of the leave and licence agreement for which the security deposit was not returned. He further pointed out that Op No. 2 had damaged the rented portion substantially at the time of vacating the premises. It was agreed between the parties during execution of leave and licence agreement that if any damage is caused by the OP no. 2 the said damage has to be repaired by OP No. 2 and if not done, the repairing cost shall be incurred from security deposit. He further argued that OP no. 2 has violated the terms of the agreement for which he is not entitled to get any relief on the basis of the agreement. It is the further argument of the petitioner that police has conducted investigation in a perfunctory manner so the instant criminal proceeding is liable to be quashed.

The private opposite party did not turn up in spite of service.

The State appears and submits the CD along with memo of evidence. Learned State Advocate argued that as the charge sheet has been submitted so, there is very little scope to interfere with the proceeding at the stage.

Heard, the Learned Advocate perused the materials on record also perused the citation advanced by the Learned Advocate for the petitioner reported in **2022 SCC Online CAL2076(Pawan Kumar Sethia and Ors. Vs.**

State of West Bengal & Anr.) Paragraph 17 of the cited Judgment read as follows:

It is well settled from various decisions that the court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta to pressurise other side. The FIR also does not disclose what role was played by each petitioner i.e. Petitioner no. 2&3 who are house wives and partner of petitioner no. 1/firm with regard to offence of forgery of valuable security for the purpose of cheating. No forged document has been seized by police during investigation. The charge- sheet discloses contractual obligation and breach thereof, for which remedy is available in civil court. There is no prima facie material that the present petitioners committed offence under sections 406/420/471/468/504/506/120B IPC. The partnership firm has not been made accused in this case. The concept of vicarious liability is also not found under the IPC. Accordingly the continuation of criminal proceeding will be sheer abuse of the process of the court.

The leave and licence agreement dated 1st day of January 2012 is appended along with the petition as Annexures- A. Para 23A(ii) and (iii) is pointed out during the course of argument

(ii) if the licensee is required to vacate the premises or is required to stop the use of the same due to any breach and/ or default on the part of the Licensor, (which renders the Scheduled Premises substantially unable) and the Licensor, shall have failed to remedy such breach/ default after 15 days from receipt of a notice from the Licensee in this behalf, then and in that event the Licensor shall compensate the Licensee for the costs of repairs and

renovations carried out by the Licensee in the Scheduled Premises.

*(iii) Alternatively, the Licensee shall be entitled to forthwith terminate this Agreement by giving in writing to the Licensor in the event of the Scheduled Premises, or any part thereof being destroyed or damaged by as aforesaid ands shall hand over vacate possession of the Scheduled Premises upon the Licensor refunding to the Licensee the entire security deposit amount of **RS 1,44,000/-(Rupees One Lakh forty four thousand only)** in one single instalment.*

On perusing the CD it appears that different correspondence through e- mail was exchanged between the petitioner and private opposite party No. 2 in respect of cost of repair work and for obedience of leave and licence agreement. It further appears that some settlements were arose between the parties at some point of time. However, the final settlement has not arisen.

During the course of investigation police has collected the materials in respect of the alleged offence committed by the present petitioner U/s 420/406 IPC. Police visited the P.O., collected copy of leave and licence agreement, and some employee of O.P. No. 2 were examined. Police has collected the copy of e-mail exchanged between the parties. After investigation police has submitted charge sheet against the present petitioner U/s 420/406 IPC.

It is submitted by the petitioner that the present case does not constitute an offence U/s 420 or 406 of IPC Section 420 IPC is the punishment of cheating and dishonesty inducing delivery of property. Section- 420 IPC is the aggravated form of Section 417 IPC (Punishment of Cheating)

Cheating is defined U/s 415 of IPC as follows:

415. Cheating.- *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so*

deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"

Explanation.- a dishonest concealment of facts is deception within the meaning of this section.

This section has two parts:

While in the first part the person must 'dishonestly' or 'fraudulently' induce the complainant to deliver any property; in the Second part, the person should intentionally induce the complainant to do or omit to do a thing. Thus, a guilty intention is an essential ingredient of the offence of cheating.

Hon'ble Supreme Court in **Anil Mahajan Vs. Bhor Industries Ltd.** [(2005)10SCC228] has held that

"From mere failure of a person to keep up promise subsequently, culpable intention right at the beginning cannot be presumed. 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 is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction."

It is the fact of the FIR that the present petitioner has intentionally did not return the security deposit though private OP No.- 2 has vacated the premises. It has been further alleged that the petitioner has misappropriate the fund for his own use. There is nothing in the FIR that at the initial time of execution of Leave and Licence Agreement the petitioner or his

predecessor has/had any intention to deceive the de facto complainant to deliver the fund (security deposit). Mens rea is the essential ingredients for commission of offence punishable U/s 420 IPC. FIR, as well as the charge-sheet of this case does not disclose the criminal intention of the petitioner.

In the present case the property, that is, the security deposit was entrusted to the petitioner by virtue of a contractual agreement. The violation of agreement by the de facto complainant is glaring in this present case. Non-refunding of a fund which was received by virtue of a contractual agreement is not give rise a criminal liability when there is the allegation that the terms of the agreement is not obeyed by the de facto complainant. The absence of mens rea of the petitioner destroy the prosecution case.

Considering the same I find the de facto complainant may have some right to sue for breach of contract against the present petitioner but no criminal liability can be attracted against the petitioner.

In the present case, considering the same, I find merit to entertain the instant criminal revision.

Hence, the instant criminal revision is allowed.

The proceeding arising out of Bidhannagar Police Station case No. 68 of 2016 dated 06.04.2016 U/s 420/406 of the IPC giving rise to GR Case No. 283 of 2016 pending before the Learned Additional Chief Judicial Magistrate at Bidhannagar North 24 Parganas is hereby quashed.

Pending CRAN application, if any, is also disposed of.

(Subhendu Samanta, J.)