

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3561 of 2019

Ranjan Sachdeva

-vs-

The State of West Bengal & anr.

For the Petitioner : Mr. Rachit Lakhmani
Ms. Afree Begum

For the State : Mr. Madhusudan Sur
Mr. Saryati Dutta

Heard on : 21.6.2022

Judgment on : 30.06.2022

Ajoy Kumar Mukherjee, J.

1. This revisional application has been directed to quash/set aside the FIR bearing No.812 of 2019 dated October 3, 2019 registered by Sankrail Police Station pursuant to the complain dated October 2, 2019 made by the complainant/opposite party no.2, Sk. Azizul Rahaman.

2. The petitioner has contended in his revisional application that on November 12, 2019 he received a copy of notice dated October 24, 2019 along with a copy of FIR bearing No.812 of 2019 dated October 3, 2019 wherein it has been alleged that the complainant had supplied readymade garments by truck to the petitioner towards which the petitioner issued a cheque bearing No.039173 amounting to Rs.50,00,000/- to the complainant, which was

dishonoured and as a result of which the complainant claims to have been cheated by the petitioner.

3. The petitioner is absolutely innocent and in no way connected with the commission of the alleged offence and he has been falsely implicated out of grudge and ill motive and due to a vengeful attitude on the part of the complainant.

4. Mr. Rachit Lakhmani, learned counsel on behalf of petitioner submits that no goods whatsoever was supplied by the complainant /opposite party no. 2 to the petitioner and complainant has failed to disclose any document to show that there was any transaction which took place between the complainant and the petitioner. The petitioner had given the said cheque to the complainant as a security for supply of goods. Moreover, the issue of dishonoured cheque is the subject matter of a proceeding under Section 138 of the Negotiable Instruments Act initiated by the complainant /opposite party no. 2 against the petitioner before the Court of learned Judicial Magistrate, 6th Court, Howrah. Before initiating the aforesaid proceeding under Section 138 of the Negotiable Instruments Act complainant sent notice through his advocate on September 4, 2019 upon the present petitioner and the said notice did not have any mention of committing such offence and does not even contain a whisper relating to cheating and/or criminal breach of trust. Accordingly, it is evident that the complain which culminated into the said FIR under Sections 406/420 of the Indian Penal Code is nothing but a mere afterthought being used by the complainant to harass the petitioner. Furthermore, from a bare reading of the complain, no case of cheating and/or criminal breach of trust is made out against the petitioner. Actually, the complainant is attempting to use the criminal machinery as a tool to extort money from the petitioner which

the complainant does not deserve. Accordingly, the petitioner has prayed for quashing the FIR being No.812 of 2019 dated October 3, 2019 which is registered by Sankrail Police Station, Howrah.

5. Learned counsel for the State Mr. Madhusudan Sur submits that investigation has already been ended in charge-sheet and the Sankrail Police Station has submitted charge-sheet against the petitioner under Sections 406/420 of the Indian Penal Code on December 31, 2021.

6. The basic facts contained in the FIR are as follows:-

- a)** The complainant had a long standing business relationship and transaction with the accused/petitioner herein and he had every trust on the accused/petitioner and he believed him.
- b)** One year back as per verbal order and request made by the accused/petitioner, opposite party no.2 send huge quantity of readymade garments, the value of which would be Rs.1 crore, to the business place of petitioner in Delhi by truck and the said garments were duly received by him.
- c)** The petitioner/accused started payment part by part to complainant against the said amount and thus, he made payment of Rs.22 lakhs.
- d)** In order to make rest part of payment, petitioner/accused issued a cheque amounting to Rs.50 lakhs.
- e)** When the said cheque deposited to the banker of the opposite party no.2, it got dishonoured on the ground of “insufficient fund”.
- f)** The opposite party no.2/complainant informed about dishonor of said cheque to the petitioner/accused and though accused/petitioner had assured him to make the entire payment within few days but

ultimately he did not pay to the opposite party no.2/complainant, nor he has returned the garments.

- g)** Accordingly, the petitioner/accused had given false assurance to opposite party no.2 with a clear intention to cheat him from the very beginning of the instant transaction, though he neither paid the total due amount of Rs.79 lakhs nor return the readymade garments which was delivered to him by the opposite party no.2/complainant.
- h)** The petitioner/accused further cheated him by issuing account payee cheque which was dishonoured.
- i)** Had it been known to the opposite party no.2/complainant that he would be cheated by the petitioner then he would have never supplied the said huge amount of readymade garments to him and had it been known to him that he would be cheated by the petitioner by accepting the said cheque which he issued in his favour, knowing fully well that it would be dishonoured, he would have never accepted the said cheque.

7. On perusal of case diary, it appears that during investigation police had seized certain challans in support of delivery of goods to the accused/petitioner by opposite party no.2/complainant and during investigation police has also recorded statement of some witnesses.

8. On perusal of the statement made by the witnesses under Section 161, it appears that witnesses have stated that the petitioner/accused has received the readymade garments which were delivered to him, but in spite of repeated demand he is not paying the due amount and on the contrary, the cheque given by him has been bounced.

9. The witnesses further admitted about the long standing business relationship in between the accused/petitioner and the complainant and they have not stated anything about the alleged cheating or about criminal breach of trust.

10. In the above backdrop, it is to be examined whether allowing the present proceeding to continue would be an abuse of the process of the Court or not and whether in the present case, in order to secure ends of justice, jurisdiction under Section 482 of the Code of Criminal Procedure should be invoked or not. In **G. Sagar Suri and another Vs. State of Uttar Pradesh and others**, reported in **(2000) 2 SCC 636**, Apex Court observed in paragraph no.8:

“8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

11. In **Hridaya Ranjan Prasad Verma and others Vs., State of Bihar and another**, reported in **(2000) 4 SCC 168**, it was held that there is a fine distinction between mere breach of contract and the offence of cheating. It depends upon the intention upon the accused at the time of inducement which may be judged by his subsequent conduct but for this, subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of

the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise, subsequently such a culpable intention right at the beginning that is when he made the promise cannot be presumed.

12. In ***Vir Prakash Sharma Vs., Anil Kumar Agarwal and another***, reported in **(2007) 7 SCC 373** it was held that non-payment or under-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

13. In the present context it is not the case of the opposite party no.2/complainant that no payment has been made in connection with the alleged delivery of readymade garments. On the contrary, it has been specifically stated in the written complaint that in terms of said transaction, accused had made part payment of Rs.22 lakhs. There is no factual foundation of the allegation of initial deception and such allegation is merely an inference drawn by the opposite party no.2 from subsequent failure of the accused/petitioner to keep his promise by not making the payment of the balance amount. The basic fact constituting initial deception by way of false representation on the part of the petitioner at the outset of initiation of transaction has neither been expressly stated nor otherwise suggested in the FIR. The materials appearing in the case diary namely the statements recorded under Section 161 of the Code of Criminal Procedure, also does not suggest that there was any initial deception by way of false representation on the part of the accused. When an amount of Rs.22 lakhs have been admittedly paid against the total bills, it can hardly be said that the accused had no intention to pay right from the beginning of the transaction. Accordingly, the initial deception which is the basic ingredient of cheating is conspicuously

absent in the present case. Similarly, there may be a breach of contract made by the petitioner due to non-payment of balance amount, which can always be the subject matter of a civil court but in order to establish criminal breach of trust, *mens rea* must have been disclosed to give rise to a criminal prosecution.

14. In *Alpic Finance Limited Vs. P. Sadasivan and another*, reported in (2001) 3 SCC 513, It was held by the Apex Court in paragraph 10:-

“10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception”.

15. In *Satishchandra Ratanlal Shah Vs. State of Gujarat and another*, reported in **(2019) 9 SCC 148,** It was held in paragraph 12, 13 and 14 as follows:-

“12. In this context, we may note that there is nothing either in the complaint or in any material before us, pointing to the fact that any property was entrusted to the appellant at all which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 punishable under Section 406 IPC. Hence the learned Magistrate

committed a serious error in issuing process against the appellant for the said offence. Unfortunately, the High Court also failed to correct this manifest error.

“13. *Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] .) In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.*

“14. *Moreover, this Court in a number of cases has usually cautioned against criminalising civil disputes, such as breach of contractual obligations (refer to Gian Singh v. State of Punjab [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC”.*

16. In view of the above, it is clear that a plain reading of complain as well as materials collected during investigation does not disclose ingredients of offence of criminal breach of trust or cheating, alleged to have been committed by the present petitioner. The complaint also does not disclose what role was played by the petitioner with regard to the offence of cheating or criminal breach of trust. The charge-sheet submitted in this case does not disclose why petitioner has been implicated under the charge of cheating or criminal breach of trust. The witnesses during investigation have categorically admitted that there was a business relationship in between the parties and the goods were delivered as a part of business transaction and part payment has also been made by the petitioner and in order to make payment of the rest amount he had issued

cheque which got dishonoured due to insufficient fund and for which Section 138 proceeding has already been initiated by the opposite party no.2. There is no prima facie material to show that the present petitioner committed any offence under Sections 406/420 of the Indian Penal Code.

17. In the above circumstances, I find that the continuation of the present criminal proceeding pending against the present petitioner will be sheer abuse of process of court in view of the fact that there is remote chance of convicting the present petitioner either under Section 420 or under Section 406 of the Indian Penal Code, on the basis of materials available so far during investigation and therefore, I find sufficient reason to invoke the inherent power under Section 482 of the Code of Criminal Procedure to quash the present proceeding.

18. Accordingly, the revisional application being CRR 3561 of 2019 is allowed. The proceeding initiated vide Sankrail P.S. FIR No. 812 of 2019 dated October, 3, 2019 is quashed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)