

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

Present:

The Hon'ble Justice Uday Kumar

CRR NO. 117 of 2017

Santosh Ranjan Saha

Vs.

State of West Bengal & Anr.

For the Petitioner	:	Mr. Mrityunjay Chatterjee, Adv.,
	:	Mr. Suwendu Khanra, Adv.,
For the State	:	Mr. Bidyut Kumar Roy, Adv.,
	:	Mr. Pratik Bose, Adv.
Heard on	:	13.06.2023.
Judgment on	:	21.12.2023

Uday Kumar J.:

1. The criminal proceeding being A.C.G.R Case Number 2859 of 2016 arising out of Anandpur P.S case no 118/2016 under Sections 420/506/323/34 of I.P.C, pending before the court of Ld. A.C.J.M. South 24 Parganas at Alipore since 02.09.2016, is the subject matter of challenge in this revisional application.
2. The revisionist became aggrieved by the aforesaid criminal proceeding started against him based on the written complaint of O.P. 2 Arun Kumar De, filed on 18.05.2016 to the officer in charge of the Anandpur Police Station, complaining therein that revisionist

cheated, assaulted, abused and threatened him on 10.04.2016, while they were sitting at Gaurang Pally, V.I.P Nagar in Kolkata, to settle their dispute relating to a money transaction held between them under the agreement executed on 21st March 2012. It is a fact that both were partners in M/s Navratan Industries and services since 6th July 2009. Under the guise of the said relationship, Revisionist requested O.P.2 to owe him a sum of Rs.13,46,000/- (thirteen lac forty six thousands only) for a period of one year on certain terms and condition of the agreement executed on 21st March 2012, because he was in dire need of money for his Navratan Garment Business. Accordingly, O.P. 2 has paid the amount under the schedule of payment of the money, which has been seized by I.O and is attached with C.D.

3. On completion of one year, the Revisionist did not return the agreed sum to O.P 2 as per terms of the agreement rather he dragged this matter for further three years or more. Revisionist avoided several occasions of negotiation. As a result, O.P. ultimately compelled him to sit for negotiation on 10th April 2016 at Gaurang Pally, VIP Nagar, Kolkata to settle the issue, where he assaulted O.P. 2 with fists and blows, abused him, threatened him with dire consequences out of irritation and annoyance. This very incident triggered the O.P. 2 to lodge the F.I.R before the jurisdictional police station. The Charge-sheet had been filed by the I.O. against the accused/Revisionist on 12.04.2019 under Sections 420/506/323/341 of the I.P.C.

4. In his revisional application he prayed for the quashing of the criminal proceeding on the following grounds: -
 - i. O.P. 2 had informed the incident to the police station after a lapse of more than one month from the date of occurrence. Unexplained delay in lodging the F.I.R is fatal for the prosecution case because possibility of false implication and embellishment cannot be ruled out.
 - ii. The F.I.R did not reflect any element of deception and dishonest intention. Both elements are necessary to constitute an offence of cheating as defined in Section 415 of IPC. Mere monetary transactions are not sufficient to hold someone guilty of cheating. Similarly, nothing is available on the C.D to show the element of assault, abuse and intimidation.
 - iii. The dispute is purely civil in nature and arising out of the violation of the conditions of the Agreement of dated 21st March 2012. Any prospective dispute to arise between the parties was to be settled in terms of the Clause (9) of the Agreement 2012.
 - iv. O.P.2 suppressed the facts of the pending Civil Suit no 334 of 2014 instituted by the Revisionist before the court of the Ld. Civil Judge(1) Kamrup, against O.P. 2 for his acts committed in contrary to the terms and conditions of the Agreement and the Criminal Case no. 1622 of 2015 under Section 384, 506 and 511 IPC pending before the court of the Ld. J.M. Kamrup

against O.P. 2 in District Court at Guwahati in Assam, in the F.I.R, which reveals his unworthy conduct.

5. Ld. Counsel for the Revisionist, Mr. Mrityunjay Chatterjee had argued that the allegations are civil in nature because it arose out of a breach of contractual terms and conditions, for which remedies lay before the civil court. He fortified his submission by relying on the ratio decided by the Hon'ble Supreme Court in ***Rajesh Bajaj Vs State NCT of Delhi & Ors.*** reported in **(1999) 3 SCC 259**, wherein the Hon'ble Supreme Court has held that:

"7. After quoting Section 415 of IPC, learned Judges proceeded to consider the main elements of the offence in the following lines:

*"A bare reading of the definition of cheating would suggest that there are two elements thereof, namely, **deception and dishonest** intention to do or omit to do something. In order to bring a case within the first part of Section 415, it is essential, in the first place that the person who delivers the property should have been deceived before he makes the delivery; and in the second place that he should have been induced to do so fraudulently or dishonestly. Where property is fraudulently or dishonestly obtained, Section 415 would bring the said act within the ambit of cheating provided the property is to be obtained by deception."*

10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheating were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code [Illustration f] is worthy of notice now:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

The second leg of his submission is that there is a distinction between pure contractual dispute of civil nature and an offence of cheating because mere breach of contract, per se would not come in the way of the initiation of a criminal proceeding. In any event this dispute was civil in nature as it was started only after gross violation of breach of contractual obligations under the Agreement was executed in the year of 2012, at the instance of the revisionist. Clause (9) of the said Agreement provided for the manner for settlement of the probable dispute if it arose between the parties. Despite that, this criminal proceedings was initiated against him, which apparently would not lie. The offence of cheating and dispute arising out of contractual relationship are two different things. The Hon'ble Supreme Court has made relevant observation on this point in the case of **V. Y. Jose and Another Vs State of Gujarat and Another** reported in **(2009) 3 SCC 78**, as is expressed hereunder:

"21. There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure."

22. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Penal Code is existence of an (sic fraudulent or dishonest) intention of making initial promise or existence thereof from the very beginning of formation of contract.

23. Section 482 of the Code of Criminal Procedure saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

24. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.”

6. He further submitted that the F.I.R was filed after more than one month from the alleged date of occurrence, which raised serious doubt as to its veracity, because the possibility of embellishment could not be ruled out, particularly when he stated in his written complaint that he came to know about the Revisionist/Petitioner in 2010, whereas there was proof of execution of partnership deed with petitioner on 06.09.2009.

7. He also submitted that the Criminal Court at Calcutta has no jurisdiction to entertain this criminal proceeding. He relied on the observations made by Hon’ble Supreme Court in ***Preeti Gupta and Another Vs State of Jharkhand and Another*** reported in (2010) **7 SCC 667**, in respect of inherent power of high court.

“14. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice,

for the administration of which alone it exists, or to prevent the abuse of process of court. Inherent power under Section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent the abuse of process of court; and*
- (iii) to otherwise secure the ends of justice.*

18. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution but the Court's failing to use the power for advancement of justice can also lead to grave injustice.

19. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

*20. This Court had occasion to examine the legal position in a large number of cases. In *R.P. Kapur v. State of Punjab* (AIR 1960 SC 866: 1960 Cri LJ 1239) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:*

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) Where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

So, he prayed for quashing of the criminal proceeding under Sections 482 of the Cr.P.C, because it was initiated on the defective written complaint of Arun Kumar Dey lodged on 18th May 2016, before the I/C of Anandapur Police station, upon which the Anandapur Police Case no 118 of 2016 was initiated on the date of 18th May, 2016 under Section 420, 506, 343, 341 and 34 of IPC. It does not disclose the commission of the alleged offence but O.P.2 has attempted to give criminal colour to a dispute of a civil nature with intention to harass the appellant.

8. On the contrary, Ld. Counsel on behalf of the State O.P 1 Mr. Bidyut Kumar Roy, has submitted that this criminal proceeding has no nexus with the partnership business, but has direct connection with the acts of cheating, assault, intimidation of revisionist to Arun Kumar Dey. After investigation, a charge sheet under Sections 420, 323, 506 and 34 of IPC was submitted by the investigating officer (I.O) against the Revisionist Sanjay Ranja Saha. He further added that the Revisionist had fraudulent

intention from the beginning to cheat O.P.2 by inducing him to lend the sum of money of Rs. 13,40,000/- to his Navratan Garment business under the Agreement of 2012 with no intention to pay the sum back to him. Such act of the Revisionist certainly has the element of inducement and dishonest intention to constitute crime of cheating. In any event, the monetary transaction under the agreement is admitted by the Revisionist. His failure to return the amount in terms of the Agreement of 2012, induced O.P.2 Arun Kumar Dey to lodge the F.I.R. The existence of partnership deed cannot prohibit a partner to bring criminal prosecution against another partner for his criminal acts. No agreement can shield anyone from criminal proceedings, nor can snatch the jurisdiction of court to entertain a criminal proceeding against accused.

9. The Ld. Counsel further submitted that whether the intention was to cheat from the inception or not is a question of fact and the same can only be decided through trial after appreciation of the entire evidence. So, he prayed for dismissal of this revisional application.

10 . He further stated that the delay of more than a month in filing the written complaint was not fatal in this case, as the offence of cheating is a continuing offence, so explanation of delay was not required.

11 .The main question which falls for consideration in this revision is to decide whether the impugned Criminal Proceedings of A.C.G.R

Case No 2859 of 2016 initiated before the court is liable to be quashed?

12 .This revisional application is made under Sections 482 of the Cr.P.C, for quashing of the impugned criminal proceeding mainly on the grounds that no criminal proceedings shall be initiated for the dispute of civil nature.

13 . Section 482 of Cr.P.C. empowers the High Court to exercise its extraordinary inherent jurisdiction to do real and substantial justice, necessary for the proper administration of justice, or to prevent abuse of the process of the court orto otherwise secure the ends of justice.

14 . It is pertinent to note that this application was preferred by the accused for quashing when the cognizance of the said criminal proceeding was taken by the Ld. Trial Court on the basis of the police report submitted before the court after completion of the investigation.

15 . It is an admitted fact that the revisionist and O.P.2 were partners in M/s Navratan Industries and services, formed under a deed of partnership at will executed on 6th July, 2009. Out of said prior acquaintance, the Revisionist induced O.P. 2 to help him by giving him a sum of Rs. 13, 46,000/-for a period of one year for on certain terms and the condition of the Agreement dated 21st March 2012. O.P. 2 acted upon the said agreement. He paid the sum under 'schedule of payment receipt'to ameliorate the financial health of his Navratan Garment Business of revisionist. The

dispute arose when the Revisionist not only started to avoid paying the money back to O.P.2, but also foiled his efforts taken for the recovery of the money. In last meeting Revisionist applied criminal force against O.P. 2 held at Gaurang Pally, VIP Nagar, Kolkata, on 10th April, 2016, out of frustration and grudge.

16 . It is fact that mere inability to repay the amount would not be offensive unless the element of cheating i.e., fraudulent or dishonest intention is shown right at the beginning of the transaction, as the *mens rea* is the crux of the offence. Even if all the facts in the complaint and materials of the case are taken on their face value, no such dishonest representation or inducement could be found or inferred merely on its face value because this is a triable fact and needs to be decided on trial that whether any fraudulent inducement and mens rea was there on the part of the Revisionist since inception of the transaction or not.

17 . In ***Gyan Singh Vs State of Punjab*** reported in **2012 10 HCC 303**, it is held that a civil dispute such as breach of contractual obligation should not be criminalized unless the breaches which are accompanied by fraudulent or deceptive inducement, resulted in involuntary transfer under section 415 of IPC. But this fact also need trial for proper determination. Such fact cannot be decided in absence of the complainant O.P. 2, who can only throw light on the facts that whether this transaction was made voluntarily by O.P.2 or not. The criminal proceeding is at initial stage. I think triable

matters should be decided by the trial court properly by recording evidence of witnesses.

18 . Similarly, the other charges of assault, abuse and intimidation and issues of delay FIR, lack of jurisdiction of Trial Court etc are also required to be decided by Ld. Trial Court because Trial Court shall decide such issues on the evidence adduced by parties before the court and the accused would get the opportunity to cross-examine the witness. Other issues are also triable in nature which may be decided by the Trial court on evidence.

19 . Coming to the aspect of quashing of the criminal proceeding, it is well settled that such exercise needs to be undertaken in exceptional cases. It is well settled that the taking of cognizance being the pre-trial stage of any criminal proceeding, the court cannot base the decision of quashing the charges on the basis of the quality or quantity of evidence rather the enquiry must be limited to a prima facie examination. (***State of Bihar Vs Ramesh Singh*** reported in ***1977 Cri LJ 1606***)

20 . The Hon'ble Supreme Court has reiterated that High Court cannot conduct a mini trial while exercising powers under Section 482 of Cr.P.C. at the stage of discharge and /or while exercising the powers under Section 482 Cr.P.C., the court has a very limited jurisdiction and is required to consider 'whether any sufficient material is available to proceed further.

21 . In any event the criminal proceeding cannot be stalled in the name of civil nature of a dispute as it arising out of an agreement

or the pending civil suit in the court. The observation of Hon'ble S.C on this very issue is pertinent in this case. It was observed in Rashida Kamuluddin Syed vs Shaikh Saheblal Mardan [appeal (crl) 283 of 2007, decided on 02.03.2007] that "the contention that a civil suit is filed by the complainant and is pending has also not impressed us. If a civil suit is pending, an appropriate Order will be passed by the competent court. That, however, does not mean that if the accused have committed any offence, jurisdiction of criminal court would be ousted. Both the proceedings are separate, independent and one cannot abate or defeat the other."

22 . Therefore, I do not find anything on record which may show that process of court has ever abused in this criminal proceeding or justice would be denied to Revisionist if this proceeding properly concluded by the Trial Court. I also do not find anything to quash this criminal proceeding initiated on the said F.I.R. It would be just and proper to decide this case on merit by trial court. Let the trial court proceed to conclude the trial as per the law. I make it clear that no observation of this court would be binding on the Ld. Trial court.

23 . It is settled law that the death of O.P. 2 would not vitiate the criminal trial because it is the bounded duty of State to punish the offender.

24 . The ratio decided in the cases referred by the Revisionist is not applicable in the given facts and circumstances of this revisional application.

- 25 . For the reasons aforementioned, the impugned criminal proceeding pending does not suffer from any defects, so it cannot be quashed as prayed for by the Revisionist in this application.
- 26 . Accordingly, the criminal revisions being CRR 117 of 2017 along with application, if any is accordingly dismissed.
- 27 . Interim order, if any, stands vacated.
- 28 . Ld. A.C.J.M Alipore will proceed with the case in accordance with law. He is directed to conclude the pending proceeding expeditiously.
- 29 . Parties, can proceed on the urgent certified copy of the order, if necessary.

(UDAY KUMAR, J.)