IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 5 of 2015
With
CRAN 7 of 2017 (Old No: CRAN 4740 of 2017)

Indrajit Ghosal
Vs.
The State of West Bengal & Anr.

For the petitioner : Mr. Sourav Chatterjee,
: Ms. Namrata Chatterje.

For the State : Mr. Madhusudan Sur, ld. APP.,
: Mr. Dipankar Pramanick.

Hearing concluded on: **31/03/2023**

Judgment on: 06/09/2023

Rai Chattopadhyay, J.

1. The petitioner is aggrieved firstly with the order of learned Judicial Magistrate, 5th court at Alipore dated 22.11.2013, rejecting his prayer under Section 239 of the Cr.P.C. Secondly the petitioner is aggrieved with the FIR being Charu Market Police Station Case No. 89 of 2006 dated 06.12.2006 under Section 420 of the Indian Penal Code, being lodged against him.

2. Mr. Chatterjee, while representing the petitioner has first refer to an annexed document, i.e, photocopy of a complaint dated 12.07.2005, address to the Deputy Commissioner of Police, Detective Department at Lalbazar, Kolkata. The complainant is the opposite party no.2 who writes the same in the capacity as a proprietor of “Deep Marketing.”

3. The said complaint would reveal inter alia as follows:-

The complainant has put up allegations of fraud and cheating against the “M/s Novel Healthcare Limited” and the Directors thereof. He says that during business transaction from January, 2003 to March 2004 he has invested a huge amount of money in Novel. He says further that inspite of commitments of refunding the said deposit “M/s Novel Healthcare Limited” has fail to maintain the said commitment and instead undertakes coercive measures against the complainant, like threatening with dire consequences. After stating these facts the complainant has sought for redressal of his grievances.

4. It is pertinent to note in the said complaint that the complainant has not come up with the details as regards the amount of sum deposited with the accused company, the specific date/dates on which such sum of money would have be deposited with the accused company and also any particular or specific role of the present petitioner in the alleged act of fraud and cheating, excepting mentioning him as a proprietor of the “Deep Marketing”.

5. The Deputy Commissioner of Police to whom the letter of complaint as above was addressed, has in turn forwarded the same to the Court and the same has been registered and the C.G.R Case No. 3167 of 2006. Mr. Chatterjee has again mentioned about the statements of the complainant/opposite party no.2 recorded by the Court on 09.07.2006.

In the same the complainant has deposed fairly in detail as to where he runs his business from and also other relevant facts connected with the present complaint. He says that the present petitioner and another person visited him for the first time in first week of June 2002. They introduced themselves as Vice President and ASH of a company namely "Dejko India Private Limited". They entered into business transactions, by executing bipartite agreement. The complainant says that the pursuant to the said agreement a sum of Rs. 2 lacks was paid by him in favour of "Dejko India Private Limited". Subsequently from the said amount of money "Dejko India Private Limited" refunded Rs. 1 lack. He further deposed that the petitioner later on incorporated "M/s Novel Healthcare Limited". According to the complainant/opposite party no.2 the balance security deposit amount, i.e, to the tune of Rs. 1 lack was transmitted to the said newly formed company "M/s Novel Healthcare Limited".

Later on 25.01.2003 a fresh agreement was entered into between the petitioner and "M/s Novel Healthcare Limited" for the business of distribution of mustard oil. For this purpose the complainant says to have deposited Rs. 8 lacks more with "M/s Novel Healthcare Limited" by paying check and cash on various dates.

He also deposed about the mode of doing business with "M/s Novel Healthcare Limited" that he would receive the materials (mustard oil in this case) and distribute the same whereas the self proceed would directly be deposit in the account of "M/s Novel Healthcare Limited". As per agreement the complainant was to receive commission for sale of mustard oil. Complainant accepts that mustard oil equivalent to an amount of Rs. 6 lacks was supplied to him which he distributed. His grievances is that though he was entitled to commission against such sale, he was no paid the same by the present petitioner in spite of repeated demands. Allegedly the written representation of the petitioner's company, i.e, "M/s Novel Healthcare Limited" dated 18.02.2003, though assured about the due month by month payment of the outstanding demand of the complainant, the said assurance was flouted by the petitioner. This according to the complainant has induced him to work for petitioner's company but ultimately he has been deprived of the due remuneration which is nothing but a fraudulent and deceptive act on the part of the present petitioner.

6. The petitioner was summoned by the Court, which prompted him to appear before the Court and file a petition under Section 239 of the Cr.P.C seeking his discharge from the case. The court, vide its order dated 22.11.2013 has dismissed petitioner's prayer as above. The Court found that the complainant was assured to be refunded but ultimately not paid.

7. According to Mr. Chatterjee the background as above, which has led to lodging of this criminal case against his client nothing but a business transaction between the two parties, in which one alleges non-fulfilment of certain conditions thereof. He emphasises that even if it is taken without prejudice to the contentions of the petitioner that there has been any unpaid debt during business done by both the parties, a criminal procedure is not to be undertaken for recovery of such unpaid debt. According to Mr. Chatterjee the same would amount to only gross abuse of the Court's process which is to be prevented by this Court sitting a jurisdiction under Section 482 of the Cr.P.C.

8. The other point envisaged by Mr. Chatterjee to challenge the FIR is that the same is in contravention of Section 156 Clause 4 of the Cr.P.C, when the complainant has lodged his grievances directly to the Deputy Commissioner of Police from which office, the complaint has ultimately relegated to the Court. Mr. Chatterjee says that this is dehors the procedure prescribed under law for lodging of a complaint. According to him not this score too, the FIR is liable to be quashed.

9. During his argument Mr. Chatterjee has relied on following judgments:-

1. *Anil Mahajan vs Bhor Industries Ltd & Anr.* reported in *(2005) 10 SCC 228*,
2. *Hotline Teletubes & Components Ltd & Ors. Vs. State of Bihar & Anr.* reported in *(2005) 10 SCC 261*,
3. *Vir Prakash Sharma vs. Anil Kumar Agarwal & Anr.* reported in *(2007) 7 SCC 373*,
4. *Thermax Limited & Ors. Vs. K.M. Johny & Ors.* reported in *(2011) 13 SCC 412*,
5. *Priyanka Srivastava & Anr. vs. State of Uttar Pradesh & Ors.* reported in *(2015) 6 SCC 287*,
6. *Sushil Sethi & Anr vs. State of Arunachal Pradesh & Ors* reported in *(2020) 3 SCC 240*,
7. *Babu Venkatesh & Ors vs. State of Karnataka & Anr.* reported in *(2022) 5 SCC 639*.

10. Mr. Sur ld. A.P.P has represented for the State and vehemently objected to what has been submitted on behalf of the petitioner. Accordingly Mr. Sur the materials on record, i.e, the FIR as well as the deposition of the complainant in Court would be sufficient to find ingredients of offence as alleged, to have been brought on record. The same, he says, shall be obviate the criminal trial to be immediately proceed with, to proof the charges against the present petitioner. By referring to the law settled in the field, it has been submitted that prima facie existence of the ingredients of offence would suffice for a trial to be proceed with against the petitioner, which criteria is duly fulfilled in the present case.

11. During his argument Mr. Sur's has relied on following judgments:-

1. *Dalip Kaur & Ors. vs. Jagnar Singh & Anr.* reported in *(2009) 14 SCC 696*,
2. *Aneeta Hada vs. Godfather Travels & Tours Private Limited* reported in *(2012) 5 SCC 661.*

12. So far the material available for consideration is this Court are concerned – those are the complaint and the statement of the complainant recorded by the Court. The same unequivocally points out to the facts that the parties entered into business transaction between themselves. Pursuant to the same money were transacted from one hand to another and also was refunded pursuant to the terms of business. Allegedly there are some unpaid money in terms of the said business transaction as laid down in a bipartite agreement between the parties. This Court is constrained to hold that in this factual background, the ingredients of offence under Section 420 of IPC can hardly be found out. Fraudulent inducement by the petitioner from the very inception of his transaction with the complainant/opposite party no.2 would be a farfetched guess in this case. The facts are otherwise. As it appears from the deposition of the complainant himself that pursuant to the business understanding materials were supplied to the complainant and also refund was made. It is not disputed that the complainant also has discharged his liabilities in business. Thus, these facts having been prima facie disclosed, this Court is constrained to hold that the ingredients of cheating as envisaged in the law, are unavailable in this case. Complainant has come up with a veiled attempt to realise his allegedly unfulfilled business debt from the petitioner, in the grab of a criminal offence committed by the petitioner. This Court is require to lift such veiled and reached to the root of the case. In *Anil Mahajan's* case [*(2005) 10 SCC 228*] (supra), the Hon'ble Supreme court has expressed view that fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction and that from mere failure to keep the promise at a subsequent stage, an offence of cheating cannot be made out.

Again in the case of *Hotline Teletubes* [*(2005) 10 SCC 261]* (supra) the Hon'ble Supreme Court noted that complaint is silent about any intention of cheating from the very inception of the transaction between the parties, and negated that any offence under Section 420 of the IPC, has been made out. The facts of the present case is similar to that.

Also pertinent is to mention about *Vir Prakash's* case [*(2007) 7 SCC 373*](supra) where the Courts findings are that non-payment or under payment of price of goods by itself does not amount to commission of offence of cheating. On the contrary it is essentially a civil dispute. The Court held that specific allegation to the effect that there was act of inducement on the part of the accused and his intention to cheat the complainant from the very inception, should be available, to constitute adequate reason, to proceed against the accused.

13. Complainant has other fora under law to pursue, in order to realise any unfulfilled debt, occurred in a business. Pursuing that a criminal case against the petitioner for the same is only an abuse of the process of Court. There is no reason as to why such a complainant may be allowed to be taken into trial.

14. Mr. Chatterjee by referring on the judgment of *Priyanka Srivastava [(2015) 6 SCC 287]* (supra) has also pointed out to the fact that the requirement of law for the Magistrate to pass an order under Section 156 (3) of Cr.P.C was not fulfilled in this case. To this view this Court repose concurrence, following the dictum of the Hon'ble Supreme Court as mentioned above. The law, as it is settled today, would require an affidavit to accompany the complaint to successfully seek the direction from the trial Court under Section 156 (3) of the Cr.P.C. Any non-compliance of this provision of law would not have sanctity of the valid and enforceable document, as it is in the present case. Similarly held by the Hon'ble Supreme Court in this regard in the case of *Babu Venkatesh* [*(2022) 5 SCC 639*] (supra).

15. On the discussion as above the present case under Section 482 of the Cr.P.C should succeed. Criminal Revision being C.R.R 5 of 2015 is allowed. Connected application being CRAN 7 of 2017 (Old No: CRAN 4740 of 2017) is disposed of.

16. Accordingly the case being CGR Case No. 3167 of 2006 pending in the Court of Judicial Magistrate, 5th court at Alipore, South 24 Parganas (connected FIR being Charu Market Police Station Case No. 89 of 2006 dated 06.12.2006) is here by set aside.

17. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

RAI CHATTOPADHYAY

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(Rai Chattopadhyay,J.)