IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 246 of 2019

With

CRR 247 of 2019

Sri Rajesh Bhagat & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners	: Mr. Debasis Kar.
For the State in CRR 247/2019	: Mr. S.G. Mukherji, learned PP, Mr. Sandip Chakraborty.
For the State in CRR 246/2019	: Mr. Binay Panda, Mr. Puspita Saha.
For the Opposite Party no. 2	: Mr. Sabyasachi Mukherjee, Mr. Bibek Dey.
Heard on	: 14.12.2022
Judgment on	: 17.01.2023

Shampa Dutt (Paul), J.:

This revision has been filed praying for quashing of the proceedings under Sections 323/406/420/447/448/506/34 of the Indian Penal Code arising out of Titagarh Police Station Case No. 169/17 dated 19.03.2017, corresponding to G.R. No. 1660 of 2017 and charge sheet vide no. 289 of 2017 dated 12.04.2017 therein and proceedings under Sections 448/323/504/34 of the Indian Penal Code arising out of Titagarh Police Station Case No. 628/17 dated 06.10.2017, corresponding to G.R. No. 6618 of 2017 and charge sheet vide no. 899 of 2017 dated 31.12.2017 therein.

The petitioners have been implicated in the present case on the allegations that they took Rupees Eight lakhs from the complainant for their personal need in the year 2015. The parties are related to each other.

Charge sheet has been submitted against the petitioners on completion of investigation. Being aggrieved the present revision has been filed.

Mr. Debasis Kar, learned Counsel for the petitioner has argued that the ingredients as required to constitute the offences alleged are totally absent and the charge sheet has been filed without there being any evidence in the case diary, at the behest of the opposite party.

The learned Additional Chief Judicial Magistrate, Barrackpore acted with material irregularity and without considering the materials on record took cognizance without going through the contents of the charge sheet. No documents were produced by the opposite party no. 2/complainant and without making any investigation, the police submitted charge sheet. The petitioners are in no way connected with the said offence. Accordingly the charge sheet being bad in law, the proceeding is liable to be quashed.

Mr. Sabyasachi Mukherjee, learned Advocate for the opposite party no. 2 has submitted that the parties being related, the opposite party no. 2 gave Rs. 8,00,000/- (Eight lakhs) to the petitioner in the year 2015 (allegedly in cash). But the amount though assured was not returned inspite of several requests. On going to the petitioners house for the money they were threatened, and their gold chain was allegedly snatched by the petitioners. Feeling helpless the present case has been filed. Charge sheet has been filed against the petitioners under Section 323/406/419/420/447/448/506/34 IPC.

Mr. S.G. Mukherjee, learned Public Prosecutor has produced the case diary and has submitted that the investigating officer finding a prima facie case of cognizable offence against the petitioners has filed the charge sheet in accordance with law.

The learned Counsel for the petitioner has relied upon the following rulings:-

(a) In Jawahar Lal Ghosh and Others vs. Mihir Kr. Ghosh and State, (CRR No. 559 of 1998 dated 25.06.1999), 1999 CalCriLR 386, it was held:-

> *"…………Mere parting with the money will not amount to cheating- No whisper of any deception, any fraudulent or dishonest inducement from the side of accused person- No offence is made out- Proceedings quashed."*

(b) In M.S. Natarajan vs. Ramasis Shaw and Anr., CRR No. 985 of 1994, dated 04.01.1995, (1995 CalCriLR 210), the Calcutta High Court held:-

> *"……………..If there was no inducement at the initial stage, subsequent inducement will not constitute the offence under Section 420 Indian Penal Code-Proceedings quashed."*

(c) In Mitesh Kumar J. Sha vs. State of Karnataka & Ors., Criminal Appeal no. 1285 of 2021 (arising out of SLP (Crl.) No. 9871 of 2019) dated 26.10.2021, 2021 AIR (SC) 5298, the Supreme Court held:-

> *"……………..Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at beginning of transaction - Existence of dishonest or fraudulent intention not made out- Court expressed its disapproval for imparting criminal color to civil dispute, made merely to take advantage of relatively quick relief granted in criminal case in contrast to civil dispute - Such exercise is nothing but abuse of process*

of law which must be discouraged in its entirety - Therefore, FIR liable to be quashed."

(d) In Himachal Pradesh Cricket Association & Anr. Vs. State of Himachal Pradesh & Ors., with Writ Petition (Criminal) No. 135 of 2017, Criminal Appeal Nos. 1258-1259 of 2018, dated 02.11.2018, (2018 All SCR (Crl.) 1956), the Supreme Court held:-

*"**B.** ....Inherent jurisdiction is to be exercised carefully and with caution and only when exercise is justified by tests specifically laid down in Section itself – Inherent power is not rule but it is exception – It is to be applied – When it is brought to notice of Court that grave miscarriage of justice would be committed if trial is allowed to proceed - Where accused would be harassed unnecessarily – If trial is allowed to linger when prima facie it appears to Court that trial could likely to be ended in acquittal – Whenever it is found that case comes within four corners of aforesaid parameters, powers possessed by High Court under provision are very wide."*

(Para 46)

(e) In Satishchandra Ratanlal Shah vs. State of Gujarat and Anr., Criminal Appeal No. 9 of 2019 (arising out of SLP (Crl.) No. 5223 of 2018, the Supreme Court held:-

*"**15.** Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to **Gian Singh v. State of Punjab, (2012) 10 SCC 303**]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 of IPC.*

> ***16.*** *However, the High Court appears to have been carried away by the moral element involved in the breach of promise and made certain observations. Being a policy consideration, such suggestions need to be restricted. The aforementioned observations of the High Court were not only unnecessary for the adjudication of this matter, but the same could have been understood as casting some kind of aspersions on the accused. This clearly reflected a loaded dice situation against the appellant herein."*

(f) In Rekha Jain vs. The State of Karnataka & Anr., Criminal Appeal no. 749 of 2022, On May 10, 2022, (2022 LiveLaw (SC) 468), the Supreme Court held:-

> *"**Para 8.**.............As per Section 420 of IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed the offence under Section 420 of IPC. Therefore, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person.................."*

(g) In M/s. Technofab Engineering Ltd. And Anr. Vs. Bengal Mills Stores Supply Co. and Anr., Criminal Appeal No. 566 of 2016 (arising out of SLP (Crl.) No. 8558 of 2014), dated 04.07.2016, (2016 Cri. L.R. (SC) 887), the Supreme Court held:-

> *"**A.** ....Petition under Section 482 of Cr.P.C. for quashing criminal proceedings – Court cannot go into merits of controversy but Court can see substance of allegation with the view examine the contention whether initiation of criminal proceedings was abuse of the process of Court or not and quash the proceedings......................"*

The charge sheet in **the present case** has been filed for offences under Sections 323/406/420/447/448/506/34 of the Indian Penal Code.

Section 420 IPC lays down:-

> *"**420. Cheating and dishonestly inducing delivery of property.—**Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*
>
> ***Ingredients of offence.—** The essential ingredients of the offence under Sec. 420 are as follows:-*
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> *(1) There should be fraudulent or dishonest inducement of a person by deceiving him;*
>
> *(2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*
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> *(b) the person so induced to do anything which he would not do or omit if he were not so deceived, and*
>
> *(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.*
>
> *The two essential ingredients of the offence under this section are –*
>
> *(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and*
>
> *(B) Inducing the person deceived to part with property."*

The Supreme Court **in Rekha Jain vs. The State of Karnataka & Anr., Criminal Appeal no. 749 of 2022, On May 10, 2022, (Supra)** held:-

> *"As per Section 420 of IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed the offence under Section 420 of IPC. Therefore, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person."*

One of the essential ingredients in an offence under Section 420 IPC is "deliver any property". The complainant's case is that Rs. 8 (eight) lakhs was given to the petitioner. **The said handing over or receipt of rupees Eight lakhs (in cash) has not been proved**. Not even a prima facie case has been made out. There is no document of the alleged delivery of money nor any proof that such a large sum of money was handed over/given to the petitioners. The complainant's case being that the petitioner is related to them and that allegedly the said amount was given towards the petitioner's necessity. **The only material in the case diary is the statements of the complainant and her two sons (Partha Das and Kaushik Das) at page 11, 12 & 13 of the case diary.**

Section 406 IPC lays down:-

> ***"406. Punishment for criminal breach of trust.—*** *Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a*

term which may extend to three years, or with fine, or with both.

Ingredients of offence.— *The essential ingredients of the offence under Sec. 406 are as follows:-*

(1) Mens rea is essential ingredient of offence.
(2) There must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract.
(3) The accused was entrusted with the property or domain over it.
(4) He dishonestly misappropriated or converted to his own use such property;
(5) He dishonestly used or disposed of that property or willfully suffered any other person to do so in failure of-
  (a) Any direction of law prescribing the mode in which such trust is to be discharged, or
  (b) Any legal contract made touching upon the discharge of such trust."

Section 405 Indian Penal Code defines :-

"***405. Criminal breach of trust.—****Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."*

The said offence requires entrustment of property (herein cash).

The said entrustment itself could not be proved in any manner whatsoever. Not even the minimum evidence required has been brought on record to substantiate the allegation.

As to why Sections 323, 506, 447 and 448 IPC have been added in the charge sheet is not clear as the ingredients required to constitute the said offences, is not in the case diary. It appears that the said Sections may have been added with the hope to make an extremely weak case a little stronger, which the complainant has stated in her written complaint regarding which no materials/evidence could be conducted.

The ingredient of dishonest inducement and entrustment is clearly absent in this case thereby the offence of cheating is not applicable.

The total case seems unbelievable based on absolutely no substance nor any material to even prima facie make out the offences alleged.

The investigating agency on recording only three short statements of the complainant and her two sons and without any other evidence regarding the offences alleged has filed the charge sheet and the Magistrate also without going through the materials before the Court proceeded to take cognizance without proper application of mind and passed a judicial order.

The role/conduct of the investigating officer herein is to be looked into by his superiors/supervising authority. Now comes the role of the Magistrate who on being satisfied (on what materials?) sent the petition under Section 156 (3) Cr.P.C. for registering the FIR.

In **Anand Kumar Mohatta and Anr. vs. State (Govt. of NCT of Delhi) Department of Home and Anr., Criminal Appeal no. 1395 of 2018, (arising out of SLP (Crl.) No. 3730 of 2016, on 15 November, 2018**, the Supreme Court held:-

> *"**26.** In State of Haryana and Ors. v. Bhajan Lal and Ors.5, this Court has set out the categories of cases in which the inherent power under Section 482 of Cr.P.C. can be exercised. Para 102 of the judgment reads as follows: -*
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> *4 2006 (6) SCC 736 5 (1992) Supp (1) SCC 335 "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima*

facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The present case falls under the 1st, 2nd, 3rd, 4th & 5th category set out in para 102 of the judgment in the case of State of

Haryana and Others vs. Bhajan Lal and Ors., (Civil Appeal No. 5412 of 1990 decided on November 21, 1990).

In the present case, right at its initiation in the petition under Section 156(3) Cr.P.C. there is no material to proceed. The proceedings herein is bad right from the start as even the basis of the dispute (handing over Rs. 8 lakhs) was not prima facie present or proved.

In the present case there is not inducement nor any delivery of property nor entrustment. There is no substance/evidence even prima facie to prove the commission of any of the cognizable offences by the petitioners as alleged.

In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022),** the Supreme Court held:-

> *"**15.** This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another**, **(2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*
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> *"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.*

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a *prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :*

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in* ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335*** *as under :*

*"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the*

exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned

> *Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*
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> ***17.*** *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in* ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315****."*

The proceeding in the present case is clearly an abuse of the process of Court and law and interest of justice requires that the proceedings be quashed.

CRR 246 of 2019 and CRR 247 of 2019 are accordingly allowed.

The proceeding being G.R. No. 1660 of 2017, arising out of Titagarh Police Station Case No. 169/17 dated 19.03.2017, for offence under Sections 323/406/420/447/448/506/34 of the Indian Penal Code and the proceeding being G.R. No. 6618 of 2017, arising out of Titagarh Police Station Case No. 628/17 dated 06.10.2017, for offence under Sections 448/323/504/34 of the Indian Penal Code, are hereby quashed.

No order as to cost.

All connected applications stand disposed of.

Interim order if any stands vacated.

Let a copy of this judgment be sent to the concerned court for information.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)