IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
<u>Appellate Side</u>

Present:

Justice Bibhas Ranjan De

C.R.R. 375 of 2017

With

IA No. CRAN 2 of 2017 (Old No. CRAN 3179 of 2019)

With

IA No. CRAN 3 of 2017 (Old No. CRAN 3580 of 2019)

Jaimurty Minerals and Chemicals Pvt. Ltd. & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioner no. 2	:Mr. Avik Dhar, Adv.
	Mr. Arani Guha, Adv.
	Ms. Rituparna Saha, Adv.
	Ms. Tanusree Bag, Adv.
	Ms. Ruchi Hallen, Adv.
For the petitioner nos. 3, 4 & 5	:Mr. Sourav Chatterjee, Adv.
	Mr. Arindam Guha, Adv.
	Mr. Satadru Lahiri, Adv.
For the opposite party no. 2	:Mr. Soumya Nag, Adv.
	Ms. Subhangini Singh, Adv.
	Mr. Ashok Kr. Singh, Adv.

For the State :Mr. Bidyut Kr. Ray, Adv.
Ms. Sima Biswas, Adv.

Heard on :30.08.2023, 03.10.2023
24.11.2023, 04.12.2023,
06.12.2023, 06.12.2023,
11.12.2023

Judgment on : 21st December, 2023

Bibhas Ranjan De, J.

1. This application under Section 401/482 of the Code of Criminal Procedure (for short Cr.PC), relates to the prayer for quashing of the proceeding of complaint case no. CS/0087130 of 2016 under Section 406/420 of the Indian Penal Code (for short IPC) pending before the Ld. Metropolitan Magistrate, 17th Court, Calcutta.

2. Genesis of the case is that both the complainant and accused companies are incorporated under the Prohibition of Companies Act, 1956. In the year 2014 accused company represented by its manager and directors approached the complainant company for supply of coal and coke. Accused company represented to the complainant company that it was a big supplier of coal and coke and a need of huge supply of coal. However, Complainant Company agreed to the proposal and supplied 196.29 MT of Lam Coke to the accused company time to time which was delivered at the site as specified by the representatives (accused no.2 to 5). Complainant company supplied Lam Coke and duly raised credit notes with invoices time to time aggregating to a sum of Rs. 30,26,950.07p. In spite of several request and reminders accused did not pay such dues in full. A sum of Rs. 4,59,601/- became due and payable by the accused to the complainant company resulting in gross violation of legal contract between the complainant company and the accused.

3. Complainant Company lodged one complaint with the aforesaid allegation before the Ld. Chief Metropolitan Magistrate, Calcutta under Section 200 of Cr.PC which was transferred to the Court of Ld. Chief Metropolitan Magistrate, Calcutta, 17th Court, for inquiry and disposal. According to Ld. Metropolitan Magistrate issue process after inquiry i.e. after taking evidence on oath under Section 202 of the Cr.PC.

4. Ld. Counsel Mr. Sourav Chatterjee, appearing on behalf the petitioners has contended that admittedly opposite party/

company supplied coke to the petitioners company to a sum of Rs. 30,26,950.07p and out of which petitioners company already paid 26,69,940.73/- and the rest amount of Rs. 3,57,009.34/- was a disputed amount for which remedy lies before the civil forum. Mr. Chatterjee has further submitted that the offence of cheating involves an initial deception where a party had no intention to pay at any point of time including at the time initially entering into any agreement. According to Mr. Chattejee non-payment of any part of the amount due does not make out an offence of cheating except a breach of contract for which remedy lies in the Civil Court.

5. In support of contention Mr. Chatterjee has relied on the following cases:-

- ***Anil Mahajan Vs. Bhor Industries Ltd. And another*** reported in ***2005 (10) SCC 228.***
- ***Hotline Teletubes and Components Limited and another*** reported in ***2005 (10) SCC 261.***
- ***Uma Shankar Gopalike Vs. State of Bihar and another*** reported in ***2005(10) SCC 336.***
- ***Murari Lal Gupta Vs. Gopi Singh*** reported in ***2005 (13) SCC 699.***

- ***Vir Prakash Sharma Vs. Anil Kumar Agarwal & another*** reported in ***2007 (7) SCC 373.***
- ***V.Y. Jose and another Vs. State of Gujrat & another*** reported in **2009 (3) SCC 78.**
- ***Dalip Kaur and others Vs. Jagnar Singh and another*** reported in ***2009 (14) SCC 696.***
- ***Medmeme, LIC & others Vs. Ihorse Bpo Solutions Private Limited*** reported in ***2018 (13) SCC 374.***

6. Per contra, Ld. Counsel. Mr. Soumya Nag, appearing on behalf of the opposite party has submitted that there was no long standing relationship between the two companies to attract the principles laid down by the Hon'ble Apex Court in the cases relied on behalf of the petitioners/accused.

7. Mr. Nag has submitted that petitioners/ accused refused to pay outstanding dues in spite of repeated requests/reminders which gives rise to a presumption of initial deception. It is submitted that such culpable intention on the part of the petitioners/accused can be the subject matter of quashing exercising inherent power of the Court under Section 482 of the Cr.PC.

8. In support of his contention, Mr. Nag barked on following cases:-

- ***Trisuns Chemical Industry Vs. Rajesh Agarwal and others*** reported in ***(1999) 8 Supreme Court Cases 686.***
- ***Priti Saraf and another Vs. State (SCT of Delhi) and another*** reported in ***(2021) 16 Supreme Court Cases 142.***
- ***Medchl Chemicals & Pharma (P) Ltd Vs. Biological E. Ltd. And others*** reported in ***(2000) 3 Supreme Court Cases 269.***
- ***Indian Oil Corpn. Vs. Nepc India Ltd. And others*** reported in ***(2006) 6 Supreme Court Cases 736.***

Principles set out in the cases relied on behalf of the parties:-

9. In ***Anil Mahajan*** (supra) Hon'ble Apex Court held:-

> *"**8.** The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs 3,05,39,086 out of the total amount of Rs 3,38,62,860 was paid leaving balance of Rs 33,23,774. We need not go*

into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question."

10. ***Hotline Teletubes*** (supra) observed as follows:-

" 1. Heard learned counsel for the parties.

2. This appeal by special leave has been filed by the appellants against the order passed by the Patna High Court, refusing to quash their prosecution under Sections 406 and 420 of the Penal Code, 1860 (for short "IPC"). In the complaint petition, it has been alleged that the complainant supplied goods to the accused persons, but they failed to pay the price therefor. There is no whisper in the complaint that at the very inception of the contract between the parties, there was any intention to cheat. It appears from a bare perusal of the complaint that it is a case of purely civil liability and no criminal offence is disclosed, much less offences either under Section 406 or 420 IPC. So far as the High Court is concerned, it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In our view, allowing such prosecution to continue would amount to an abuse of the process of court and to prevent the same, it would be just and expedient to quash the same.

3. Accordingly, the appeal is allowed and prosecution of the appellants is hereby quashed."

11. ***Uma Shankar Gopalike*** (supra) handed down the following principle:-

> *"**6.** Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC."*

12. ***Murari Lal Gupta*** (supra) observed as follows:-

> *"**6.** We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied*

that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent."

13. ***Vir Prakash Sharma*** (supra) set down the following principle:-

*"**8.** The dispute between the parties herein is essentially a civil dispute. Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Penal Code can be said to have been made out in the instant case. Section 405 of the Penal Code reads, thus:*

"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'."

Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made."

14. ***V.Y. Jose*** (supra) laid down as follows:-

*"**14.** An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:*

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.

A matter which essentially involves dispute of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being not a short cut of executing a decree which is non-existent. The superior courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functionings of the trial courts."

15. In ***Dalip Kaur*** (supra) Hon'ble Apex Court held as follows:-

"**10.** The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See *Ajay Mitra* v. *State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])"

16. ***Medmeme, LIC*** (supra) decided the principle as follows:-

*" **12.** After going through the allegations contained in the complaint and the material on record, we are of firm conclusion that the matter entirely pertains to civil jurisdiction and not even a prima facie case is made out for the offences under Sections 420, 406 and 409 read with Section 120-B IPC even if the allegations contained in the complaint are to be taken on their face value. The complaint gives a clear*

impression that it was primarily a case where the respondent had alleged breach of contract on the part of the appellants in not making the entire payments for the services rendered to the appellants. On the other hand, it is not in dispute that substantial amounts have been paid by the appellants to the respondent company for the services rendered."

17. In ***Trisuns Chemical Industry*** (supra) it was held by the Apex Court as follows:-

*"**3.** The gist of the complaint is this: in the month of October 1996 the accused Directors approached him and offered to supply 5450 metric tons of "toasted soyabean extractions" for a price of nearly four and a half crores of rupees. The rate quoted by the accused was higher than the market price. The appellant had to pay the price in advance as demanded by the accused. So the same was paid through cheques. But the accused sent the commodity which was of the most inferior and sub-standard quality. The complainant produced xerox copies of the reports obtained from the laboratory to which samples of the commodities were sent for testing purposes. The said laboratory has remarked that the commodity was of "the most inferior and sub-standard quality". The complainant suffered a loss of 17 lakhs of rupees by the aforesaid consignment alone. According to the appellant he was induced to pay the price on the representation that the best quality commodity would be supplied and the price was paid on such representation. But by supplying the most inferior quality the accused deceived the complainant and thereby the offence was committed. The above are the salient features of the allegations in the complaint.*

***9.** We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the* *disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] ."*

18. ***Priti Saraf*** (supra) observed as follows:-

*"**2.** The factual matrix of the matter as reflected from the complaint as alleged is that the subject property in question i.e. 37, Friends Colony (East), New Delhi is in the ownership of the second respondent. The said property was mortgaged with State Bank of Patiala and the total legal liability payable to the Bank was Rs 18 crores. That in order to clear the said dues, the second respondent hatched a conspiracy with broker Ashok Kumar so as to cheat and defraud the appellant complainants and to further misappropriate the amounts paid by the complainants as part of the deal, the second respondent breached the trust of the appellant complainants deliberately and falsely stating to the appellant complainants that the second respondent would be liable to pay a sum of Rs 25.50 crores to the complainant if the deal is not carried forward by the second respondent. Keeping in view the overall scenario, the agreement to sell was executed on 24-12-2011 between the second respondent and the first appellant. The second respondent agreed to sell 1205.43 sq*

yd of the property in question for a total sale consideration of Rs 63,28,50,750. At the time of execution, the first appellant paid a sum of Rs 12.50 crores vide cheque dated 24-12-2011 drawn on HDFC Bank, New Friends Colony, Delhi. As per Clause 3 of the said agreement to sell, the second respondent had to perform and complete three requirements which were compulsory in nature. The said requirements were to be completed by the second respondent latest by 24-3-2012 before any further amount is to be received by her from the first appellant complainant.

30. *Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction.*

31. *In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal* *proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482CrPC for quashing such proceedings.*

32. *We have perused the pleadings of the parties, the complaint/FIR/charge-sheet and orders of the courts below and have taken into consideration the material on record. After hearing the learned counsel for the parties, we are satisfied that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. The High Court was not justified in quashing the criminal proceedings in exercise of its inherent jurisdiction. The High Court has primarily adverted on two circumstances,*

(i) that it was a case of termination of agreement to sell on account of an alleged breach of the contract and;

(ii) the fact that the arbitral proceedings have been initiated at the instance of the appellants.

Both the alleged circumstances noticed by the High Court, in our view, are unsustainable in law. The facts narrated in the present complaint/FIR/charge-sheet indeed reveal the commercial transaction but that is hardly a reason for holding that the offence of cheating would elude from such transaction. In fact, many a times, offence of cheating is committed in the course of commercial transactions and the illustrations have been set out under Sections 415, 418 and 420IPC."

19. In **Medchl Chemicals & Pharma** (supra) it was held as follows:-

*"**4.** The factual score depicts that the respondents approached the petitioner for the purpose of securing ethambutol hydrochloride drug in bulk for sale and use in*

various pharmaceutical drugs and products being manufactured by the respondent Company. It is at this juncture that the petitioner has come out with a definite case that by reason of a promise of maintaining a continuous supply of raw materials to the petitioners herein for the purpose of manufacturing ethambutol hydrochloride and in such a way so as not to cause any interruption or hindrance to the manufacturing activity of the complainant's factory, the complainant-petitioner entered into an agreement dated 31-8-1997 which inter alia records as below:

"It is the responsibility of the party of the 2nd part to maintain sufficient inventory of the raw materials as described in Annexure I in order to maintain consistent supplies to the manufacturer and not to cause any interruption/hindrance with the manufacturing activity by the manufacturer."

17. *On a careful reading of the complaint, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they*

"are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an

offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import". (vide Pratibha Rani v. Suraj Kumar [(1985) 2 SCC 370 : 1985 SCC (Cri) 180]) (SCC p. 383, para 21)"

20. ***Indian Oil Corpn. Vs. Nepc India*** (supra) it was held as follows:-

*"**2.** The appellant (Indian Oil Corporation, for short "IOC") entered into two contracts, one with the first respondent (NEPC India Ltd.) and the other with its sister company, Skyline NEPC Limited ("Skyline" for short) agreeing to supply to them aviation turbine fuel and aviation lubricants (together referred to as "aircraft fuel"). According to the appellant, in respect of the aircraft fuel supplied under the said contracts, the first respondent became due in a sum of Rs 5,28,23,501.90 and Skyline became due in a sum of Rs 13,12,76,421.25 as on 29-4-1997.*

***3.** The first respondent hypothecated its two Fokker F27-500 Aircrafts, bearing Registration Nos. VT-NEJ (12684) and VT-NEK (10687) to the appellant under the deed of hypothecation dated 1-5-1997, to secure the outstanding amounts. Clause (2) of the said deed provided that the two aircrafts with all parts and accessories stood hypothecated to IOC by way of charge and as security for payment of the amounts due, with effect from the date of hypothecation. Clause (3) read with the schedule set out the installments' schedule for payment of the amount due. Under clause (6),* *NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC. It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount. Clause (9) provided that if NEPC India failed to pay any of the installments with interest within the stipulated time, or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law. Clause (12) confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due. It is stated that Skyline also hypothecated its aircraft (VT-ECP) under a separate hypothecation deed dated 14-5-1997. It is further stated that a tripartite agreement dated 6-5-1997 was entered among IOC, NEPC India and Skyline setting out the mode of payment of the dues and recovery in the event of default.*

4. *As NEPC India failed to pay the first two installments as per schedule, IOC stopped supply of aircraft fuel on 3-6-1997. However, subsequently, under a fresh agreement dated 20-9-1997, a revised payment schedule was agreed upon and IOC agreed to recommence supply of aircraft fuel on "cash-and-carry" basis. Even this arrangement came to an end as the installments were not paid.*

12. *The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a* *few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:*

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

Decisions:-

21. I heard the Ld. Counsels appearing on behalf of the parties. I have also gone through the cases relied on behalf of the parties between the lines with rapt attention.

22. The facts of the cases relied on by Mr. Nag are not at all identical to the facts of the case in hand. On the other hand cases relied on by Mr. Chatterjee relate to facts of business transaction and part payment those are almost identical to the case in hand.

23. In this case, allegation is that the opposite party/ complainant supplied Lam Coke valued at Rs. 30,26,950.07p to the petitioners/accused. According to written complaint under Section 200 Cr.PC in paragraph 10 it is clearly admitted that out of 30,26,950.07p petitioners /accused paid 25,67, 349.07p and rest unpaid amount was 4,59,601. To attract the offence under Section 420 IPC complainant/opposite party has to satisfy the following two ingredients:-

- Deception of a person either by making a false or misleading representation or by other action or omission;
- Fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

24. There is no allegation in the plaint under Section 200 of the Cr.PC that at the time of agreement petitioners /accused made any false or misleading representation. Had it been so petitioners/accused would not have paid Rs. 25,67, 349.07p in response to supply Lam Coke of Rs. 30,26,950.07p. In terms of same logic opposite party / complainant cannot be said to have been induced fraudulently or dishonestly to deliver the Lam Coke. Therefore, question of cheating under Section 420 of the IPC cannot be the issue in this case.

25. In catena of decisions Hon'ble Apex Court held that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed lateral, the same even cannot amount to cheating. In the case in hand, I do not find any initial deception let alone development of intention lateral.

26. Section 405 of Cr.PC deals with the definition of criminal breach of trust. According to Section 405 IPC two ingredients are to be satisfied to justify the offence punishable under Section 406 of the IPC. Those are entrustment and misappropriation. In our case, dispute is over the unpaid amount of goods supplied to the petitioners/accused by the opposite party/ complainant. Therefore, the issue in this case does not match with the dispute in hand.

27. In the aforesaid view of the matter, I find that it is a fit case where I should exercise inherent jurisdiction under Section 482 of CrPC.

28. Thus, the proceeding in connection with complaint case no. CS/0087130 of 2016 under Section 406/420 of IPC pending before the Ld. Metropolitan Magistrate, 17^{th} Court, Calcutta, stands quashed. Revision application being no. C.R.R 375 of 2017 stands allowed on contest without costs.

29. Pending applications, if there be any, stand disposed of.

30. Interim order, if there be, also stands vacated.

31. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

32. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]