IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 374 of 2019

Sumit Roy

Vs

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Kallol Kumar Basu, Md. Jannat Ul Firdous.
For the State	:	Mr. Bidyut Kumar Roy, Ms. Rita Datta.
Heard on	:	27.02.2023
Judgment on	:	29.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been filed praying for setting aside of an order dated 12.12.2018 passed by the Learned Judicial Magistrate, 2nd Court, North 24 Parganas in G.R. 1238/09 (CIS 1094/18) arising out of Baguiati Police Station Case being No. 154/09 dated 15.05.2009 under Sections 467/468/471/420 of the Indian Penal Code pending before the Court of 2nd Judicial Magistrate at Barasat.
2. The petitioner's case is that the husband of opposite Party No. 2 namely Soumen Sur expired in the year 2003. He had a business of Cable Television Operator under the name and style of Lokenath Electronics Pvt. Ltd. The petitioner was the manager of the said business.
3. That after the death of the husband of the Opposite Party No. 2, the Opposite Party No. 2 became very close to the petitioner. In the year 2006, opposite party No. 2 married the petitioner and the petitioner left the job at Lokenath Electronics Pvt. Ltd.
4. Subsequently the Opposite Party No. 2 filed a suit for divorce being MAT Suit No. 136 of 2014 under Section 27 of the Special Marriage Act.
5. On 04.08.2017 a decree of divorce was granted. The Opposite party No. 2 also initiated a criminal case under 498A of Indian penal Code against the petitioner which is pending.

6. The Opposite Party No. 2 lodged an information with the Officer-in-Charge, Baguiati Police Station stating that she had a business of cable TV operator by the name of Lokenath Electronics. She appointed the petitioner as the collection agent and he intentionally hampered her business. Such information was diarized vide GDE 31 dated 01.05.2019.

7. On the basis of such GDE information the Opposite Party No. 2 filed a complaint being No. C 960/09 before the Learned Chief Judicial Magistrate at Barasat under Section 156(3) of the Code alleging commission of offence against the petitioner under Section 467/468/471/420 of the Indian Penal Code and praying for a direction upon the Officer-in-Charge, Baguiati Police Station, to start a case on the basis of such complaint. Pursuant to such order, Baguiati Police Station being No. 154/09 dated 15.05.2009 was started against the petitioner. Between 24th and 27th January, 2009 the petitioner allegedly fled away with 300 such collection cards and withdrew cash amounting to Rs. 60,000/- from UCO Bank. The petitioner forged the name of the proprietorship on the cards and changed it to such a name that it led to wrongful loss to the complainant.

8. On 31.08.2009 report in final form being No. 118/10 was submitted by the Investigating Officer praying for discharge of the petitioner. Accordingly, the petitioner was discharged from the said case being Baguiati Police Station Case being no. 154/09.

9. Thereafter the Opposite Party filed an application for further investigation and such prayer for further investigation was rejected by the Learned Chief Judicial Magistrate. The Opposite Party No. 2 then filed a revisional application being no. 154/12 before the Learned Sessions Judge at Barasat and the said application was allowed and the Court directed the Learned Chief Judicial Magistrate to rehear the petition of the de facto complainant. The Chief Judicial Magistrate, Barasat was then pleased to allow the prayer for further investigation. Charge Sheet No. 353/15 was submitted on 30th June, 2015 in connection with the same case against the petitioner under Section 467/468/471/420 of the Indian Penal Code.

10. The Learned Magistrate on 12.12.2018 was pleased to reject a prayer for discharge of the petitioner holding that there is sufficient materials in case diary as well as in the record against the petitioner/accused person for which he can be held liable under Sections 467/468/471/420 of the Indian Penal Code and there is a prima facie case against the petitioner.

11. It is submitted by the petitioner, that the impugned order dated 12.12.2018 is illegal, is not sustainable in law and therefore liable to be set aside.

12. **In spite of due service there is no representation on behalf of the Opposite Party No. 2.**

13. The state has placed the case diary.

14. **From the materials on record it is evident that:-**

I. The parties in this case were married and were running a cable operator business jointly.

II. Later dispute cropped up leading to divorce and subsequent filing of this case.

III. Initially the case ended in FRT and the petitioner was discharged.

IV. Prayer for further investigation was rejected by the magistrate.

V. As per direction of the session judge, further investigation was directed, which ended in a Charge Sheet.

15. Hence the revision.

16. The offence alleged is under Sections 467/468/471/420 of Indian penal code.

17. The allegation of withdrawal of Rs. 60,000 by the petitioner is from their JOINT ACCOUNT, allegedly without the complainant's consent.

18. **Section 467 of the Indian Penal Code, lays down:-**

> *"**467. Forgery of valuable security, will, etc.—** Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable*

property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients of offence.—*The essential ingredients of the offence under Section 467 are as follows:-*

(1) Accused committed forgery.

(2) He did so by preparation of a forged document or electronic record in the manner provided in Sections 463 and 464."

19. **Section 468 of the Indian Penal Code, lays down:-**

*"**468. Forgery for purpose of cheating.—**Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, 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 Section 468 are as follows:-*

(1) There should be a forgery in respect of the document or electronic record in question.

(2) The intention of the forgery should be that the forged document or electronic record is to be used for the purpose of cheating.

(3) There should be forgery with particular intent."

20. **Section 471 of the Indian Penal Code, lays down:-**

*"**471. Using as genuine a forged document.—** Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].*

Ingredients of offence.—*The essential ingredients of the offence under Section 471 are as follows:-*

(1) The accused fraudulently or dishonestly used a document or electronic record as genuine.

(2) The accused knew or had reason to believe that the document or electronic record was a forged one."

21. **Section 420 of the Indian Penal Code, 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:-*
>
> > *(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*
> >
> > *(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."*

22. The materials in the present case clearly shows that the dispute between the parties is civil in nature (material and business related) and there is no materials on record to even prima facie show that the petitioner has committed the offence of forgery or cheating. There is also no ingredient to show that the complainant was

dishonestly induced to deliver any property. The parties have developed all these disputes after their divorce in respect of their business.

23. The Supreme Court in **Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021)** while considering an appeal against an judgment and order of the High Court of Karnataka in an application under Section 482 of the Cr.P.C. wherein the prayer of the petitioners for quashing of proceedings of offence punishable under Section 406, 419, 420 read with Section 34 of the IPC was dismissed, held:-

> *"**26.** Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the following three key issues require determination in the instant case:*
>
> *- Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?*
>
> *- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?*
>
> *- **Whether the dispute is one of entirely civil nature and therefore liable to be quashed?***
>
> *Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?*
>
> ***37.** Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a*

civil suit, but whether the relevant ingredients for a criminal case are even prima facie made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.

"…………….Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

***41.** Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of **M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.**, as under :-*

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."

***42.** It was also observed:-*

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors….There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged."

43. *On an earlier occasion, in case of* ***G. Sagar Suri and Anr. Vs. State of UP and Ors.****, this Court has also observed:-*

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

44. *Furthermore, in the landmark judgment of* ***State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors.*** *regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:-*

"(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 F.I.R. 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."

45. *Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.*

46. *Recently, this Court in case of* ***Randheer Singh Vs. The State of U.P. & Ors.****, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-*

"33. ….There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint

10. Criminal Appeal No. 932 of 2021 (decided on 02.09.2021) discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above."

***47.** Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.*

***48.** In view of the above facts and discussions, the impugned order dated 13.08.2019 passed by the High Court of Karnataka is set aside. The impugned F.I.R. No. 185 of 2016 dated 29.03.2016 and proceedings in C.C.No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, in pursuance of charge sheet dated 29.03.2017 against the appellants for offences under Sections 406, 419, 420 read with Section 34 IPC stands quashed."*

24. **The dispute is between a husband and wife (now divorced) and relates to their business and also their joint Bank Account.**

25. In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the applicant in a cognizable offence, as such the proceedings in this case should be quashed and this is a fit case where the inherent powers of the Court should be exercised.

26. **CRR 374 of 2019 is allowed**.

27. The proceedings being G.R. Case No. 1238 of 2009 corresponding to Baguiati Police Station Case No. 154/09 dated 15.05.2009 under Sections 467/468/471/420 of the Indian Penal Code, pending before the learned Judicial Magistrate, 2nd Court, Barasat, North 24 Parganas, is hereby quashed.

28. There will be no order as to costs.

29. All connected Application stand disposed of.

30. Interim order if any stands vacated.

31. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

32. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)