IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:
The Hon'ble Justice Rai Chattopadhyay

CRR 630 of 2016

Bijay Kishore Chaurashiya

Vs.

The State of West Bengal & Anr.

For the Petitioner	: Mr. Subrata Bhattacharjya, Mr. Indranuj Dutta.
For the State:	: Narayan Prasad Agarwala, Mr. Pratick Bose.

Hearing on : 18/01/2023

Judgment in court on : 18/01/2023

Rai Chattopadhyay,J.

1. Petitioner is aggrieved with the order dated 27th November, 2015 passed by the Judicial Magistrate, 2nd Court at Durgapur in C.R. Case No. 424 of 2015. The complaint case was lodged by the petitioner against the accused person/opposite party no. 2 under Section 420 of the Indian Penal Code and by dint of the said order under challenge, the same has been dismissed by the Trial Court.

2. Mr. Bhattacharjya, learned Advocate appearing for the petitioner has contended, inter alia, that the Trial Court is errant in dismissing the complaint on the very first date having found no ingredient of offence alleged to have been made out therein to proceed with the same.

3. It is submitted that the finding of the Trial Court in the impugned order dated 27th November, 2015 is not based on any cogent materials and suffers from non-application of mind as the Court has failed to consider the allegations made in the complaint as well as the attending facts and circumstances.

4. It is further submitted that the petitioner/complainant had a business transaction with the accused person/opposite party and accordingly, carried on certain work for him in terms of the work order issued in his favour. For the said work the complainant issued a cheque of Rs.5,00,000/- on 15th January, 2015, drawn on Canara Bank Shaheed Nagar, Bhubaneswar Branch (a/c payee cheque being No. 664584). Allegedly, when the complainant has deposited the cheque for encashment, the same was dishonoured due to lack of requisite fund.

5. According to Mr. Bhattacharjya, his client was assured by the accused person not to embark upon taking recourse under law for dishonour of cheques and also the assurance that the entire due amount shall be paid to him very shortly.

6. Petitioner/complainant alleges that such promise was not kept by the accused person/opposite party and the money was not paid. According to the petitioner, this has constituted fraud and deception to have been committed by the accused person upon him and prompting him to file the said complaint in the Trial Court.

7. It is submitted that the ingredients of offence and a cognizable case have been made out in the said complaint against the accused person/opposite party which the Trial Court has failed to consider and, thus, illegally and erroneously has passed the order dated 27th November, 2015 which is impugned in this revision.

8. During arguments Mr. Bhattacharjya has relied on a judgment of Hon'ble Supreme Court of India reported in ***AIR 2000 SC 1869***, ***M/s Medchl Chemicals & Pharma Private Limited vs. M/s. Biological E. Ltd & Ors.***, on the proposition that a complaint could not be quashed by the Magistrate only on the ground that civil remedy is available for the complainant. The petitioner has stated that since in this case the ingredients of cheating are well on record from the attending facts and circumstances, criminal intention of the accused person is also well-explicit, the Trial Court should have taken cognizance of the complaint and proceeded in accordance with law. On the basis of the same, he has prayed for an appropriate relief.

9. Mr. Agarwala, learned Advocate appears for the State in this case. As a matter of fact, Mr. Agarwala has supported the submissions made on behalf of the petitioner that a cognizable case of cheating has been made out in the complaint and the Trial Court should have considered the same and proceeded accordingly instead of, dismissing the complaint at the threshold.

10. Notice has been served upon the opposite party/accused person and the affidavit-of-service filed in Court today be kept with the record. No one is representing the accused person/opposite party no. 2, in spite of due service.

11. In this case a business transaction between the complainant/petitioner and the accused person/opposite party is an undisputed fact. The accused person has handed over a cheque of Rs.5,00,000/- dated 15th January, 2015 to the complainant which has been dishonoured. The complainant has not taken recourse under law for remedying dishonour of cheque. Instead he has come up with this complaint in the Trial Court alleging offence committed by the accused person under Section 420 of the Indian Penal Code.

12. Therefore, the complainant is now duty-bound to bring on record at least prima facie, the existence of the ingredients of the offence under the said provisions of law against the accused person, to maintain his case.

13. Section 420 of the Indian Penal Code has provided punishment for cheating and dishonestly inducing delivery of property and says that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person would be liable under the said provision of law. 'Cheating' is defined under Section 415 of the Indian Penal Code in the following manner.

> ***"415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omitif he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".***

14. To hold a person guilty of cheating it is necessary to show that the person had a fraudulent intention at the time of making any promise. Deception and fraudulent inducement at the very inception of mutual dealing is the key ingredient upon which offence upon cheating shall be established.

15. To maintain a criminal proceedings, similar ingredients would be required to be available in the complaint as well as from the materials, prima facie. In this case it is now for the complainant to show prima facie with adequate materials, that such fraudulent intention of the accused person was existent in the transaction between them from the very induction.

16. It appears that the petitioner has tried to contrive such fraudulent intention of the opposite party/accused person from the fact that after dishonour of cheques the accused person has induced him not to go for legal recourse and to wait for him to pay the entire due money to the complainant. Unfortunately, excepting the submissions made on behalf of the petitioner/complainant in this regard, there is no material available before this Court in the record, of any such promise being extended to the complainant by the accused person. It is unconceivable and impossible to understand as to on what basis such a submission is made before the Court. Barring that, what else is transpiring from the record and submissions is may be the agony of, a claimed to be unpaid business acquaintance, of the accused person, whose complaint is devoid of any material showing deception or dishonest inducement, more so, when admittedly their inter se transactions were pursuant to business only. A due remaining unpaid by the accused person to the complainant in furtherance of a business transaction, is no way constituting any offence as alleged against the accused person.

17. We may not forget at this moment the well-settled law in the celebrated judgment of Hon'ble Supreme Court in ***State of Haryana & Ors. vs. Bhajanlal & Ors.*** reported in ***1992 Supp. (1) Supreme Court Cases 335*** which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure may be espoused. Relevant portion thereof may beneficially be quoted below:-

"This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to myriad kinds of cases wherein such power should be exercised : (SCC pp. 378-79, para 102)

"102. (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 Act concerned (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 Act concerned, 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."

18. Since then, it is well-settled that unless the complaint is revealing a cognizable case and ingredients of offence against the accused person and also his involvement in the offence as alleged the complaint should not be proceeded with against the accused person or otherwise that should be an abuse of the process of Court.

19. The judgment of the Hon'ble Supreme Court, as referred to by the petitioner would not be of any benefit for him as the proposition settled therein, that, in presence of prima facie ingredient as to offence alleged, availability of civil remedy would not preclude petitioner's rights to move the criminal forum, is distinguishable on the fact that in this case the complaint has not been able to bring out any cognizance case against the accused person and no prima facie material is available against him to suggest existence of any ingredients of the offence alleged.

20. In this case it has already been discussed that there is no iota of any ingredient of offence or criminal intent of the accused person/opposite party or his culpability. The ratio of the decision, as above, squarely applies and the finding of the Court is bound to be that the compliant by the present petitioner was not maintainable at all. Upon such finding I have no hesitation to hold that the Trial Court has committed no error in dismissing the complaint of the petitioner by dint of the impugned order dated 27th November, 2015.

21. In my considered opinion, the same would require no interference by this Court.

22. Accordingly, this revision case fails. The impugned order dated 27th November, 2015 is upheld.

23. CRR 630 of 2016 is dismissed.

24. All pending applications, if any, are consequently disposed of.

25. Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(**Rai Chattopadhyay, J.**)