IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 634 of 2021

Prity Tubes Private Limited & Ors.

-vs.-

The State of West Bengal & Anr.

Mr. Sabyasachi Banerjee,
Mr. Lokesh Sharma,
Mr. Ramakant Sharma,
Ms. Aakansha Sharma

...For the Petitioners

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

...For the State

Mr. Karan Dudhwewala

...For the Opposite Party No.2

Reserved on : 17.05.2023

Judgment on : 17.05.2023

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the proceedings/FIR of Hare Street Police Station Case No.35/2019 dated 04.02.2019 (corresponding to G.R. Case No.155 of 2019) under Section 406/420 read with Section 120B of the Indian Penal Code including the order dated 11.01.2019 wherein the learned Chief Metropolitan Magistrate, Calcutta was pleased to allow the application under Section 156(3) of the Code of Criminal Procedure directing investigation.

The case was initiated by the order of the learned Chief Metropolitan Magistrate, Calcutta dated 11.01.2019. The relevant part of the order is set out as follows:

> ***"****The material allegations considered in the light of the annexed documents tend to spell out certain probable offences, the nature and attendant circumstances of which necessitate an investigation by police.*
> *In this view of the matter, the application u/s 156(3) Cr.PC is allowed.*
> *The O.C, Hare Street Police Station is directed to start an investigation upon receipt a copy of the application with the accompanying documents.****"***

The relevant paragraphs relating to the allegations, made in the application under Section 156(3) of Cr.P.C. being C/04/19, is set out as follows:

> ***"1.*** *That the complainant is a Limited Company, incorporated under the provisions of Companies Act, 1956, having its registered office, as mentioned in the cause title of this application, duly represented by its authorized Legal Officer Mr. Sourav Ketan Sahu, by virtue of a Resolution Passed by the Board of Directors.*
>
> ***2.*** *That the complainant company deals with a business of manufacturing of engineering procurement and construction of power and infrastructure assets for power transmission and power*

distribution to throughout India as well as abroad. The complainant company has also a trading unit by which a trading business deals with various types of iron and steel materials. The company used to received from the different purchasers and to supply iron and steel materials of various types against the said orders on cash and credit basis.

3. *That the accused company is a private limited company, having their corporate office as mentioned in the cause title of this application, which is within the area of Hare Street Police Station and under jurisdiction of this Ld. Court. The accused nos. 2 and 3 are the directors of the accused no.1, who used to run the business by taking all material decisions in business and day-to-day affairs of the company and responsible for every decisions, steps and acts of the company. Accused No.4 is the Manager of the Accused No.1 who has taken a huge role to cheat the complainant company.*

4. *That the complainant doing its business since long with good reputation and fame. The accused no.2 come to the earlier office of the complainant at 11, Dr. U.N. Brahmachari Street, Kolkata 700017 and exposed for a business as he stated that accused no.1 i.e. their company is a trader and supplier of steel materials, deals with to supply material to large scale promoters work in different parts of India and their company needed a huge iron and steel materials as they have some contracts to supply materials to the promoters for development and construction of different infraprojects for which they require iron material and if the complainant company was ready to deal business, then the directors of the company shall talk with the complainant company. Eventually the proposal of good business impressed the complainant company and they were ready to talk with the directors of the accused no.1.*

5. *That the accused nos. 2 and 3 thereafter talked with the management staff of the complainant company in presence of accused no.4, and they made some proposals which became impressive to the complainant company. The accused persons also proposed that they needed huge amount of materials as their supply of materials to infraprojects work was going on large scale basis. The complainant company proposed the mode of payment on cash, then the accused persons requested for one month credit otherwise this huge transaction would not be possible. The accused persons also assured that the said payment would be made accordingly the terms and conditions and they had a good business reputation in the market.*

6. *That the complainant company thereafter decided to supply the materials as the accused persons made assurance of payment time to time and also the impressive proposal of huge business and supply of materials. Thereafter the complainant started to supply of iron and steel materials to the accused no. 1 by proper bills and challans. On first few occasions the accused persons made payment of consignment amount as per the agreement and after that they started to make payment irregularly. Whenever the complainant requested the irregularities of payment then the accused assured the complainant that due to some unavoidable circumstances, the payment could not be made. But very soon the payment will be made and also requested the complainant company to keep supply of materials, otherwise, the entire transaction and business will be held up. The complainant believed the accused persons and supply the materials on assurance of the accused persons to receive the payment. In this matter the accused company received the materials from the complainant company worth of Rs.17,08,60,776.75 (Rupees seventeen crore eight lakh sixty thousand seven hundred* *seventy six and paise seventy five) only. After this huge amount of supplied materials and dues amount, the complainant company suffered a huge inconvenience of business due to lack of recovery of huge outstanding amount and requested the accused person to make payment, otherwise their business will be ruined-up. The accused persons assured that the payment would be made very soon. That one R.K. Sharma, the Officials of the complainant company visited numerous time to collect payment from the accused company and on the end of October, 2018, the complainant company came to know that the accused persons in this manner cheated various companies, vendors, persons, who had business with the accused company.*

7. *That on 04.11.2018, the complainant went to the office of the accused persons for recovery of money, but the accused persons within a minutes became furious and arrogant and started to use abusive languages to the officials of the complainant company and also threatened with dire consequences, if any person of the complainant company would make attempt to came and try realize the money with the accused company, there is a chance if gravies hard and loss of lives.*

8. *That it is to be noted that on 17th December, 2018, the complainant company once again met with the accused persons to resolve the matter and requested them to repay the dues but no fruitful result has come out till date from the side of the accused persons and as such the complainant company realized that they have been cheated by the accused persons.*

9. *That the complainant company state that it is clear that from the entire actions of the said accused persons, in collusion and in conspiracy with each other, have dishonestly induced the*

> *complainant company to supply the materials with false and frivolous statements with a malafide intention from the inception to misappropriate and/or convert the valuable goods to their own wrongful use of the materials which were supplied by the accused company and now threatening with dire consequences, as such their malafide act and/or omission in criminal conspiracy with each other only to have wrongful gain and to cause a wrongful loss to the complainant company, are individually liable for the offence committed by the accused persons. The accused persons are guilty of criminal breach of trust, having deliberately, mislead the complainant company into believing them with false promises while all the time they were hiding their malafide intention to cheat and fraud.*
>
> ***10.*** *That the accused persons from very inception, had intention to cheat the complainant company for which they made a rosy picture of huge transaction and business to allure the complainant company and in this matter induced to supply iron and steel materials of Rs.17,08,60,776.75 (Rupees seventeen crore eight lakh sixty thousand seven hundred seventy six and paise seventy five) only and neither they made payment of this amount nor the materials they received were returned and till they retain it or misappropriated.*"

Mr. Sabyasachi Banerjee, learned Advocate appearing for the petitioners submitted that the allegations in the complaint even if accepted to be true fails to make out any offence in view of the continuous transaction taking place between the parties for a considerable period of time. According to the learned Advocate the present case was initiated by suppressing earlier transaction and was a mode for recovery of outstanding dues. Additionally it has been submitted that the huge quantity of transaction which have taken place in regular course of business do not attract the provisions of Section 420 and 406 of the Indian Penal Code, as such the proceedings should be quashed.

Mr. Karan Dudhwewala, learned Advocate appearing for the Opposite Party No.2/complainant submitted that the investigation is in progress and it is settled proposition of law that only in the rarest of rare cases this Court should exercise its authority to interfere under Section 482 of the Code of Criminal Procedure to quash the proceeding at the inception. The petitioners should be asked to approach after the charge-sheet is filed as prima facie the opposite party no.2/complainant satisfied the learned Magistrate that investigation in respect of a cognizable offence was warranted in the background of the facts of the case. Further it has been submitted that the documents which have been enclosed by the petitioner at this stage cannot be looked into by this Court and having regard to the facts of the case no exceptional circumstances have been made out for quashing of the proceedings at this stage, the revisional application as such should be dismissed.

Mr. Sudip Ghosh, learned Advocate appearing for the State adopted the submissions of the complainant/opposite party no.2. and relied upon the Case Diary as also the report prepared by the Investigating Officer.

In view of the contention advanced before the Court and the averments made in paragraph 6 of the application under Section 156(3) Cr.P.C., report was called for from the Investigating Authorities along with the Case Diary to ascertain the period and quantity/volume of transactions which has taken place. The Investigating Officer placed on record that in course of investigation he could unearth the following:

Transaction details of EMC Ltd and Prity Tubes Pvt Ltd-

Year	Prity Tube purchased materials from EMC in Rs.	Prity Tube paid to EMC in Rs.	Due during the year	Cumulative due in Rs.
01/04/2012 to 31/03/2013	42,557,859	37,500,000	5,057,859	5,057,859
01/04/2013 to 31/03/2014	955,786,365	891,845,857	63,940,508	68,998,367
01/04/2014 to 31/03/2015	964,991,371	744,628,962	220,362,409	289,360,776
01/04/2015 to 31/3/2016	0	69,500,000	-69,500,000	219,860,776
01/04/2016 to 31/03/2017	0	49,000,000	-49,000,000	**170,860,776**
Total	**1,963,335,595**	**1,792,474,819**		**170,860,776**

In a business transactions if the finding of the investigating agency is that the purchase or supply of materials were to the tune of Rs.196 crores (approximately) out of which Rs.179 crores (approximately) have been paid and the dues are to the extent of Rs.17 crores (approximately), I am unable to satisfy how the provisions of Section 420/406 of the Indian Penal Code would apply.

In ***M N G Bharateesh Reddy -Vs. – Ramesh Ranganathan & Anr.*** reported in ***2022 SCC OnLine SC 1061***, while dealing with offences under Section 420 and Section 406 of the Indian Penal Code it has been observed by the Hon'ble Apex Court in paragraphs 16, 17, 18, 21, 22 and 23 are required to be relied upon in this case. It was held in the aforesaid paragraphs as follows:

> ***"16.*** *In Hridaya Ranjan Prasad Verma v. State of Bihar, a two-judge bench of this Court interpreted sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:*
>
> *"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.*
>
> *15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is*

said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

(emphasis supplied)

17. *In Dalip Kaur v. Jagnar Singh a two-judge bench of this Court held that a dispute arising out of a breach of contract would not amount to an offence of cheating under section 415 and 420. The relevant extract is as follows:*

"9. The ingredients of Section 420 of the Penal Code are:

"(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) 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."

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])"

(emphasis supplied)

18. *Applying the above principles, the ingredients of Sections 415 and 420 are not made out in the present case. The grievance of the first respondent arises from the termination of his services at the hospital. The allegations indicate that there was an improper billing in respect of the surgical services which were rendered by the complainant at the hospital. At the most, the allegations allude to a breach of terms of the Consultancy Agreement by the Appellant, which is essentially in the nature of a civil dispute.*

21. *The offence of criminal breach of trust contains two ingredients : (i) entrusting any person with property, or with any dominion over property; and (ii) the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.*

22. *In Anwar Chand Sab Nanadikar v. State of Karnataka a two-judge bench restated the essential ingredients of the offence of criminal breach of trust in the following words:*

"7. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime."

23. *In Vijay Kumar Ghai v. State of West Bengal another two-judge bench held that entrustment of property is pivotal to constitute*

> *an offence under section 405 of the IPC. The relevant extract reads as follows:*
>
> *"28. "Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.""*

Taking into account the documents of the present case which has already surfaced in the investigation and a summary of which has been placed on record on the basis of some of the vague narrations made in the application under Section 156(3) of Cr.P.C., I am of the view that the present case has failed to make out any offence either under Section 420 or Section 406 of the Indian Penal Code for the purpose of which any investigation is required.

Thus, the continuance of the proceedings being Hare Street Police Station Case No.35/2019 dated 04.02.2019 (corresponding to G.R. Case No.155 of 2019) as also the order dated 11.01.2019 passed by the learned Chief Metropolitan Magistrate, Calcutta would result in an abuse of the process of law and as such the same is quashed.

Accordingly, CRR 634 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)