

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. -1251 of 2018

With

IA No. CRAN 1 of 2018

(Old No. CRAN 1443 of 2018)

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CRAN 7 of 2021

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CRAN 8 of 2023 (not here)

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CRAN 9 of 2023 (not here)

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CRAN 10 of 2023 (not here)

IN THE MATTER OF

Deepak Khuntia @ Deepak Kumar Khuntia & Anr.,

Vs.

State of West Bengal & Anr.

**For the Petitioners : Mr. Sudipto Moitra Sr.Adv.,
Mr. Somopriyo Choudhury Adv.,
Mr. Uttam Sharma Adv.,
Ms. V. Kedia Adv.**

**For the O.P. : Mr. Ayan Bhattacharjee Adv.,
Mr. Anirban Dutta Adv.,
Mr. Shivam Bhimsaria Adv.**

**For the State : Mr. Arijit Ganguly Adv.,
Ms. Debjani Sahu Adv.**

Judgment on : 29.11.2023

Subhendu Samanta, J.

This is an application u/s 482 of the Code of Criminal Procedure for quashing of a proceeding in complaint case No. 320C of 2018 pending before the Learned Judicial Magistrate 3rd Court Howrah (sadar) u/s 406/34 IPC.

The brief fact of the case is that the present opposite party No. 2 has lodged a complaint case against the present petitioners contending inter alia that the complainant is a proprietor of a company namely Sur Feed Centre and the present petitioner/accused persons are the proprietor of a company namely Eva Exotica Private Limited. There were business transactions between the two companies for more than 2 years. There was an agreement between the parties that the complainant company shall provide the raw materials to the accused company and by such raw materials the accused company shall manufacture animal feed including poultry and cattle feeds and shall supply the same to the complainant company. For such purpose the accused company shall receive the manufacturing and processing feeds from the complainant company. It has been alleged that as per such agreement a huge raw material were supplied by the complainant company to the accused company which was stocked and stored at the factory of the accused company. According to the terms, the

accused company used to deliver the animal feed to the complainant company and bills are raised by the accused company and were paid by the complainant company regularly. It is the allegation of the complaint that suddenly on 08.05.2018 the accused persons had stopped production of poultry feed though a huge raw materials were lying in the custody of the accused persons valued more than Rs. 2.5 crores.

The further allegation of the complainant was that he has informed by his labour that the accused company is selling raw materials to the third parties. On query the accused company with ulterior motive demanded Rs. 2.25 Crores from the complainant by saying that if the same amount is not paid the raw materials shall not be released. On several occasions the complainant requested the accused persons to supply animal feed but they denied to do so and finally, threaten the complaint and his officials and that if they come again to their unit factory they will not hesitate to assault the complainant.

Hence this complaint.

After receiving such complaint the cognizance was taken by the Learned Magistrate u/s 406/34 IPC and the Learned Magistrate after examine the complainant on oath u/s 200 Cr.P.C. and one witness issued process against the present

petitioner u/s 406 and 34 IPC and also issued search warrant of scheduled articles and called for a report from the Officer-in-Charge concern by the 28.05.2018. By such order of Learned Magistrate directed the OC concern not to hand over the articles to anybody except by the court's order. The complainant is directed to furnish proper identification marks on his raw materials during the process of search.

Being aggrieved and satisfied with the said order of issuance of process and the issuance of search warrant the present revision has been preferred for quashing the entire criminal proceeding.

Learned Advocate for the petitioner submits that the Learned Magistrate has committed a grave error of issuance of process by virtue of the petition of complaint. The petition of complaint does not disclose any offence punishable u/s 406/34 IPC.

It is the submission of the Learned Advocate for the petitioner that the opposite party No. 2 has maliciously convert a civil litigation into a criminal case. He further argued that there was a specific agreement entered into between the parties wherein it has been agreed that the complaint has to deliver the raw materials to the petitioner company and by such the petitioner company shall prepare poultry feed which would be

supplied to the complainant company and for such the petitioner company would be entitled to raise separate bills for furnish products and also towards process charges. It has been further agreed between the parties that if the opposite party No. 2 failed to release the payments within 30 days from the date of bills. The petitioner company shall be entitled to recover the amount from the materials/stock supplied by the opposite party No. 2 which will be kept in the premises of the petitioner company. It is the fact that a huge amount became outstanding on the part of the Opposite party No. 2. Several reminders are sent to him by the company asking him to release payments within the specific time but he failed to making payment. On several circumstances the petitioner company intimated the OP No 2 that in the event of default of his part the company would invoke the terms of agreement which entitled it to recover its dues from the materials of the OP 2. Several demands/correspondence were sent to the OP No. 2 but he failed to released payments. Accordingly the petitioner company has adjusted the raw materials lying in the custody of the petitioner company and in spite of such adjustment a further sum of Rs. 58, 27,371.88/-paise was still due and payable by the OP No. 2. Vide his letter dated 12th May 2018 in reply, the OP No. 2 intent to invoke the arbitration

clause in the agreement. Suddenly, on 15th May 2018 some police officers from Jagatballavpur PS came to the factory premises and goes an inquiry at the said factory without any prior intimation to the present petitioners by virtue of a purported order of Executive Magistrate passed u/s 144(2) Cr.P.C. It appears that the proceeding was filed by the OP No. 2; it is misconceived and mala fide. No breach of peace was occurred at the factory premises moreover no men or labour of the OP No. 2 were engaged at the petitioner's factory premises at any point of time. Considering the cunning attitude of the OP No. 2 the petitioner has informed the entire matter to the Superintendent of Police (rural) Howrah. In the mean time the present OP No. 2 has lodged the instant complaint before the Learned Chief Judicial Magistrate Howrah curiously suppressed the aforesaid fact by labelling false charge of breach of trust against the employees of the company. Surprisingly by virtue of the said order passed by the Learned Magistrate in response of a prayer of search warrant some police personnel along with the men of OP No. 2 came to the factory premises by petitioners and seized all raw materials lying in the factory premises which altogether is much more valuable than the subject matter in dispute. At the time of seizing such materials, no stock register of the OP No. 2 as well

as the petitioner was verified by the OC of the said police station. Actually the OC of the said police station accompanied by the Opposite party No. 2 entered inside the factory premises of the petitioner and took away all the consignment lying the factory premises in several trucks brought by the opposite party No. 2. Thereafter the petitioner immediately moved before the Learned Magistrate for modification of the order but having no effect thereafter the forthwith the petitioner lodged a written complaint disclosed the facts and circumstances of the cognizable case and punishable u/s 392/395/403 of the IPC against the OC of Jagatballavpur PS on 19th May 2018. But the said police officers of Jagatballavpur PS neither register FIR nor took any action. On 19th May 2018 the police officer after realising such illegalities on their part came back to the factory premises of the petition and returned the raw materials damaged the same in the factory premises and under threatening to the employees of the petitioner received some signature or a piece of paper and stated that the sized materials are being kept as an interim measures at the factory premises of the petitioner company.

On the basis of the alleged fact marks the Learned Advocate for the petitioner submits that the OP stole the raw materials through by purported search and seizure; and the

complaint against the present petitioners are baseless. From the four corner of the petition of complaint it would be revealed that the ingredients of an offence u/s 406 of IPC is not at all made out. This is a completely civil dispute between the two companies which was coloured by the complainant to be a criminal action. The Opposite party no. 2 has purposefully invoked jurisdiction of a criminal forum by making a complaint which is subject matter of arbitration proceedings. More so it was sought to be initiated by the Opposite Party No. 2 terms of the contract between the parties. The instant criminal complaint and the criminal proceedings it allowed to be continued would be tantamount to abuse of process of court so, he prayed for quashing the entire criminal proceeding.

In support of his contention he cited a decision reported in **Dipak Gab and Ors. Vs. State of U.P. & Anr. AIR 2023 SC 228**

Quashing of summoning order—dispute pertaining to statement of against—allegations were that gives supplied by accused were not as per requirements and demands of complainant—complaint disclosed civil dispute—grievances relating claim made by the accused—demand, even if assumed to be lying would not satisfied ingredients Under Section 405/420/421 of 120B IPC so as to justify summoning orders—summoning order quashed.

Binod Kumar & Ors Vs. State of Bihar and Anr. 2014

(8) Supreme 112.

In discussing the judgment of Sagar Suri Vs. State of U.P. (2000) 2 SCC 636 wherein this court observed that

“It is to be seen if a matter, which is essentially of a 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 the 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.

M/s GHCL Employees Stock Option Trust Vs. M/s

Inda Infoline Ltd. (2013) 2 CLJ (SC) 111

Complaint filed by the appellant alleging false demand—criminal proceeding started by the Metropolitan Magistrate—the respondent filed criminal revisional sanction for quashing the proceeding against them—there is no specific allegations against them except the allegations that they are officer bearers of the company—on the basis of such vague allegations criminal proceeding cannot be initiated against the respondents—hence High Court rightly dismissed the criminal prosecution against them.

SK. Alagh Vs. State of U.P. & Ors. 2008 CRLJ 2256

In absence of any provisions laid down under statute a director of a company or an employee cannot be held to be vicariously liable to any offence committed by the company itself.

Cargo Messers (India Private Limited) Vs. Dhanseh

Badarmal Jain and Anr. (2007) 14 SCC 776

Criminal breach of trust and cheating—Pleadings—Ingredients of the offence not averred in criminal complaint filed one year after civil suit—Civil suit was filed alleging negligence and breach of contractual obligations-- Held, breach of contract simpliciter does not constitute an offence—Allegations in the criminal complaint must disclose the necessary ingredients therefor—Court can for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents—Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of process of the court—Superior courts while exercising inherent power should also strive to serve the ends of justice—Criminal Procedure Code, 1973—S. 482—Abuse of process of court/Law/ Fraud on court—High Court should strive to serve ends of justice.

By citing the above judgments the Learned Advocate for the petitioner submits that the criminal proceedings initiated by the OP No. 2 is misconceived and if the same be allowed to continued that would be an abuse of process of court.

Learned Advocate for the OP submits that the instant criminal revision has got no merit. The entire materials produced before this court cannot be looked into at this stage. The Learned magistrate after receiving the complaint examined the complainant along with his witness u/s 200 Cr.P.C.; being satisfied about the prima facie of the case issued process against the accused persons u/s 406/34 of IPC.

He further argued that at this juncture the revisional court cannot go into the merit of this case. The Hon'ble Supreme Court in several occasions as directed that the High court shall not exercise its jurisdiction u/s 482 Cr.P.C. wherein the merit of the criminal complaint has been specifically made out. In support of his contention he cited some decisions on the basis of his argument

**Central Bureau of Investigation Vs. Ariyan Singh &
Ors**

Where in the Hon'ble Supreme Court has held that

As per cardinal principle of law at the stage of discharge and/or quashed of criminal proceedings, while exercising the power u/s 482 Code of Criminal procedure, the court is not required to conduct the mini trial.

Kaml Sibaji Pokar Nekar Vs. Maharashtra, (2019) 14

Supreme Court cases 350.

-Criminal complaints cannot be quashed only on ground that allegations made therein appeared to be civil in nature—if ingredients of offence alleged against the accused are prima facie made out in complaint, criminal proceedings not to be interdicted.

Trisuns Chemical Vs. Rajesh Agarwal (1999) 8

Supreme Court cases 686.

Quashment of complaint or FIR—cheating alleged—criminal prosecution, held, cannot be throttled merely because civil proceedings are also maintainable—existence of an arbitration accused in the contract for supply of goods between the appellant company and another company, held in a sufficient ground for quashing the complaint filed by the appellant against the supplier company alleging cheating by supplying inferior goods—arbitrator for competent to adjudged of an offence.

Dilbag Rai Vs. State of Hariyana (2019) 16 SCC 736

Quashment of proceedings when not warranted even when dispute being a civil nature—though accused did not have titled to property, she had dealt with property and induced the complaint to part with valuable consideration—whether these allegations are true or otherwise is a matter of trial.

Fiona Shirkhande Vs. State of Maharashtra (2013) 14

Supreme Court Cases 44.

Complaint case—issue of process – scope of inquiry—sufficient of grounds for proceeding—must be as arrived at prima facie satisfaction as to whether there are grounds for proceedings, by reading complaint as a whole without deferring to defence of accused, if any without going merit to the case—must has to examine prima facie truth and inherent probabilities apparent on allegations made in complaint so as to satisfy that prima facie ingredients of alleged offence made out from complaint for issuance of process—once magistrate by exercising his discretion forms opinion regarding the existence of grounds for proceedings higher court should not substitute its own discretion for that of Magistrate.

Learned Advocate for the OP No. 2 submits that it is a settled principles of law that to exercise of power u/s 482 of Cr.P.C. the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at this stage was not under obligation to go into the merit or examined its correctness. Whatever appears on the face of the complaint shall be taken into consideration when any critical examination of the summoned offences ought to be appeared ex facie on the complaint and other documentary evidences if any on record.

He further argued that inherent power of the High Court u/s 482 of the Cr.P.C is an extraordinary power which is to be exercised with great care and circumspection before the marking to scrutinise the complaint. In deciding whether the case is the rarest of rare case to scuttle the prosecution at its inception.

On the basis of the above argument he prayed for dismissal of the instant criminal revision.

Heard the Learned Advocates.

Perused the materials on record also perused by complaint. Perused the application for quashing as well as connected documents therein. The complaint was lodged by the OP 2 against the present petitioner alleging the offence punishable u/s 406/34 IPC. It has been alleged by the complainant before the Learned Magistrate that a huge amount of raw materials were supplied to the petitioners company by the complainant for preparation of animal feed by virtue of a specific contract. The petitioners accused had the authority over the raw the materials but without any information and opinion to the complainant, the accused/petitioner has misappropriated the raw materials by disposing it in favour of third party.

Let me find out whether the petition of complaint itself disclosed about the commission of an offence punishable u/s 406 IPC. Section- 406 IPC is the punishment for the offence of criminal breach of trust. The **Criminal Breach of Trust** has been defined u/s 405 IPC.

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 ingredients of Criminal Breach of Trust are as follows:--

1. The accused was entrusted with the property or domain over it.
2. He dishonestly misappropriated or converted of his own use such property or he dishonestly used or disposed of that property.
3. The disposal of property must be in violation legal direction or of any legal contract.
4. There must have a mens rea of the accused for commission of such offence.

In this case it is true that the accused petitioner were entrusted to some raw materials and there was a legal contract/agreement between the parties that the accused petitioner shall prepared animal feed by using such raw materials and shall deliver the same to the complainant for which he shall raise bills for furnish products and also towards processing charges. It is the version of the petition of complaint that there was a long business transaction between the complainants and the petitioners. The petitioners also averted that they were entered into an agreement for the purpose of such business. The agreement was placed before this court along with the criminal revisional application. The opposite party No. 2 has also admitted the existence of such agreement; more over, the opposite party has admitted before this court that he has terminated the agreement and proceeded for arbitration. So, it is abundantly clear that, the OP No. 2 while filed the complaint before the Learned Magistrate did not disclose about the fact of agreement and its present status thereof standing between the parties; he also concealed his conduct of termination of the agreement and his proceeding towards the arbitration. It is the case the petitioner before this court that there was a huge outstanding bills to be paid by the OP No. 2 in favour of the petitioners. The OP did not pay the

huge amount of bill and also did not answered to their demand. It was also averted by the petitioner that by virtue of the terms of the agreement, the petitioners is at liberty to dispose of the raw materials to clear out the bills. The entire facts was suppressed by the OP 2 before the Learned Magistrate.

To constitute the offence u/s 406 IPC it has to be proved or that the accused has dishonestly disposed of or misappropriates the property to his own use. In this present case the petitioners company has alleged to have been disposed of the raw materials in favour of the third party but such conduct was within the ambit of the contract between the petitioner and the complainant. The OP No. 2 has managed to show a colourable picture before the Learned Magistrate by suppressing the terms of the agreement.

A business transaction between two or more companies must have exists by virtue of an agreement. In performing such business the parties are duty bound to adhere to the terms of the agreement. Breach of any terms of such business agreement has its required redress before arbitrator or may invoke a civil liability against the party in breach. Breach of Business Agreement is not always referred as criminal liability unless the ingredients of the offence are satisfied and presence

of mens rea is shown. The offence u/s- 406 IPC in a business transaction can only be invoked if it is shown that the disposal of the property made dishonestly in violation of the legal contract between the parties. Furthermore, realisation of the outstanding according to the express contract cannot be referred as guilty mind (mens rea) or the part of accused/petitioner.

Considering the same it appears to me that on the face of the petition of complaint the offence punishable u/s 406 IPC appears to be not made out. Without going through the merit of the case, it further appears to me that the criminal proceeding initiated by the OP No. 2 before the Learned Magistrate is a suppression of material fact by which the business contract between the parties culminated into a criminal proceeding. It is true that this revisional court u/s 482 of the Cr.P.C. has very limited power and to exercise the inherent power of this court the only requirement is to whether continuation of the proceeding is totally abuse of the process of the court. In this case the entire materials suggest a fit case where this court can invoke its inherent power.

I have carefully perused the entire case records along with the petition of complaint and the pleadings placed by the respective parties before this court. Considering the entire material I am of a view that the OP 2 has preferred the

complaint before the Magistrate by suppression the material of facts and the alleged petition of complaint does not make out a case punishable u/s 406 IPC against the present petitioners. Thus I find merit to entertain the instant criminal revision.

CRR is allowed.

The complaint case No. 320 C of 2018 pending before the Learned Judicial Magistrate 3rd Court Howrah (Sadar) u/s 406/34 IPC against the present petitioners along with connected Orders passed by the Learned Magistrate is hereby quashed.

CRR is disposed of.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by this court during the pendency of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)