

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1221 of 2021

With

CRAN 1 of 2021

Sankar De @ Sankar Dey

Versus

The State of West Bengal & Anr.

For the Petitioner : Mr. Kallol Mondal, Adv.
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Anamitra Banerjee, Adv.
Mr. Samsher Ansari, Adv.
Mr. Ayan Mondal, Adv.

Heard on : 01.03.2023

Judgment on : 17.03.2023

Ajay Kumar Gupta, J:

1. This application has been filed under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 by the petitioner seeking quashing of the complaint proceeding being C.S. No. 15180 of 2021 pending before the learned Court of the 19th Metropolitan Magistrate at Calcutta in connection with offences punishable under Sections 406/411/417/418/420/422 of the Indian Penal Code, 1860.

2. Gist of the petitioner's case is that opposite party no. 2 has initiated a complaint under Section 200 of the Code of Criminal Procedure before the learned Chief Metropolitan Magistrate, Calcutta on the allegation that the petitioner and the opposite party no. 2 had a business relationship since sometimes and the opposite party no. 2 used to supply tea to the petitioner. The petitioner used to pay the outstanding dues amount of any transaction in time by way of liquid cash/cheque. On such good faith and his continuous relationship, the opposite party no. 2/company supplied a huge amount of tea to the petitioner on different invoices as per the specification and order placed by the petitioner but the petitioner failed to pay a total

outstanding amount of Rs. 4,99,042/- only. Opposite party faced a huge loss thereof due to cheating by the petitioner by showing esteemed reputation and goodwill. It is further alleged that the petitioner concern received the materials in good condition as specified as per the request and order of the petitioner's proprietorship concern. It is further contention of the petitioner that the learned Court below whimsically issued summon against the present petitioner after taking cognizance though the entire case is purely civil in nature. The case is pending before the learned Court of the 19th Metropolitan Magistrate at Calcutta after transferred by the learned Chief Metropolitan Magistrate, Calcutta for disposal.

3. In spite of service, the opposite party no. 2 did not turn up at the time of hearing. Hence, the record is taken up for hearing on merit.

4. Mr. Kallol Mondal, learned counsel appearing on behalf of the petitioner, submitted that such a criminal case under Sections 406/411/417/418/420/422 of the Indian Penal Code, 1860 cannot be fastened upon the petitioner, when it is a civil dispute pending

between the parties regarding supply of inferior quality of tea. Opposite party no. 2 had supplied tea not as per the specification of the petitioner rather supplied inferior quality of Tea. Petitioner is ready to pay the outstanding dues but opposite party no. 2, without resolving the grievances made by the petitioner, filed a criminal case under Section 200 read with Section 190 of the Code of Criminal Procedure, 1973. The dispute between the parties is purely a case of civil in nature as the complaint has only arisen from the dispute regarding quality of supplied tea and non payment of outstanding dues, which in itself is a business dispute as such same cannot be converted to a criminal case. Accordingly, he prays for quashing of the said proceeding being C.S. No. 15180 of 2021 pending before the learned Court of the 19th Metropolitan Magistrate at Calcutta in connection with offences punishable under Sections 406/411/417/418/420/422 of the Indian Penal Code, 1860.

5. It is further submitted that the opposite party no. 2 has not made out any case against the present petitioner under Sections 406/411/417/418/420/422 of the Indian Penal Code, 1860. Despite of the said facts, the learned Court below took cognizance and issued summon against the present petitioner though there was neither

fraudulent nor dishonest intention was present at the time of placing order as such criminal case initiated against the petitioner is tantamount to abuse of process of law as such same is required to be quashed.

6. Learned counsel relied on several judgments of the Hon'ble Supreme Court and High Court to support his aforesaid contentions.

These are as follows :-

- 1). ***Samir Sahay @ Sameer Sahay vs. State of Uttar Pradesh and Anr., (2018) 14 SCC 233;***
- 2). ***Uma Shankar Gopalika vs. State of Bihar and Anr., (2005) 10 SCC 336;***
- 3). ***Murari Lal Gupta vs. Gopi Singh, (2005) 13 SCC 699;***
- 4). ***Hari Prasad Chamarja vs. Bishun Kumar Surekha and Ors, (1973) 2 SCC 823 and***
- 5). ***Suvra Dey and Others vs. State of West Bengal and Anr., CRR No. 3280 of 2018.***

7. Considering the submission and on perusal of the complaint as well as the order passed by the learned Court below, it reveals the petitioner never denied regarding outstanding amount of Rs. 4, 99,042/- for supply of tea to the petitioner. On the contrary petitioner's allegation of supply of inferior quality of tea by the opposite party no. 2, this causes financial loss as well as goodwill in the market to the petitioner. It is admitted facts that he was paying the outstanding dues amount earlier in time and promptly but subsequently he failed to pay the outstanding amount of Rs. 4,99,042/- and for that reason, several requests have been made by the opposite party no. 2 for payment of such outstanding dues but petitioner did not heed to pay. It is the allegation of the opposite party no. 2 that the petitioner's proprietorship concern alluded and tempted the opposite party no. 2 to act upon the rosy representation of business pictured by the petitioner. The opposite party no. 2 also gave a legal notice on 15.02.2021 by speed post through his learned advocate demanding amount of the said outstanding dues failing which the legal consequences would be followed, but all in vain. Thereby the petitioner cheated the opposite party no. 2 by false representation. It is also averted in the said complaint that the goods supplied by the opposite party no. 2 was good condition and the same was received by the petitioner without any objection but due to

malafide intention of cheating, the petitioner did not pay the outstanding amount of those goods, supplied by the opposite party no. 2, were also illegally retained for his own wrongful gain. The petitioner also dishonestly and fraudulently kept huge debts and payment of the opposite party no. 2 and thereby committed the offences under Sections 406/411/417/418/420/422 of the Indian Penal Code, 1860.

8. Now, the question emerges before this Court to decide as follows:

1. Whether the disputes as alleged between the parties are civil in nature or could be proceeded as criminal case?
2. Whether the allegations made by the opposite party no. 2 are cognizable and fulfilled all ingredients of the offences to continue the proceeding against the petitioner or required to be quashed?

9. At the very outset, it would be prudent to examine the judgments referred by the learned advocate for the petitioner one by one before deciding the case in hand.

It has been observed by the Hon'ble Supreme Court in a case referred above in Sl. No. 1 by the petitioner that :-

“‘mens rea’ on the part of a person must be established for offence of cheating. 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. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.”

10. The Hon'ble Supreme Court also observed in a case referred above in Sl. No. 2 that :-

"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."

11. The Hon'ble Supreme Court also observed in a case referred above by the petitioner in Sl. No. 3 in paragraph 6 that :-

"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.”

12. It is further observed by the Hon'ble Supreme Court in a case referred above in Sl. No. 4 in paragraph 4 that :-

“We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Indian Penal Code. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000/-. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide

by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.”

13. It is observed by the Hon'ble High Court at Calcutta in Sl. No. 5 that :-

“To constitute an offence of criminal breach of trust it is essential that the prosecution has to show first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property, so entrusted, that there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone which he willingly suffered to do. The beneficial interest in the property in respect of which criminal breach trust is alleged to have been committed, must be in some person, other than the accused and the

*latter must hold it on account of some person or in some way for his benefit. Section 405 contemplates the creation of relationship, whereby the owner of the property makes it over to another person to be retained by him until certain contingency arises or to be disposed of by him on the happening of certain events. So making over of property in a sense of law is a prerequisite prior to hurling allegation of having committed any criminal breach of trust. The unilateral claim of compensation alleging claim of possession over the case property, sought to be established by the complainant/opposite party, would not be itself decisive for our present purpose, supportive of prosecution under Section 405 IPC. The required criminal intention to cheat not having occurred to exist at the very initial stage of entering into transaction, which however, might have developed later on, the same cannot amount to cheating, as has already decided in the case of **Uma Shankar Gopalika (supra)**.”*

14. In the present case, it has nowhere been stated that at the very inception there was any intention on behalf of the petitioner to cheat, which is a condition precedent for an offence under Section 420 of the Indian Penal Code. Furthermore, there is nothing in the complaint to show that the petitioner had dishonest and fraudulent intention at the time, when the opposite party no. 2 had supplied the tea. It is further admitted facts that there was a business terms between the parties since some times and on previous occasions, the petitioner had paid the outstanding dues amount promptly. Dispute arises between the parties when the petitioner failed to pay the outstanding dues amount of Rs. 4, 99,042/- and the said non-payment was owing to supply of inferior quality of tea by the opposite party no. 2. Those disputes are apparently civil in nature and that could be decided in Civil Court. No other prima facie ingredients made out by the opposite party in a Court complaint case regarding other offences as alleged.

15. This Court also relied on several Judgments of the Hon'ble Apex Court. Those are taken up herein below :

The Hon'ble Supreme Court in **The State of Kerala v. A. Pareed Pillai and Anr.**¹ has held as follows :-

"To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise."

Similarly in the case in hand, there was nothing to show that the petitioner had dishonest or fraudulent intention at the time when agreement took place to supply tea. Business transactions were continued for considerable period of time earlier. It is not disputed by the petitioner that there was no outstanding dues of Rs. 4, 99,042/-. However, petitioner raised question about the quality of tea supplied by the opposite party no. 2. Those transactions, by no stretch of imagination, can be called dishonest inducements. It was purely business transactions of a civil nature. Simply because of the amounts have not been paid or are outstanding will not make it a case of willful or dishonest inducement or deception.

¹ 1972 Cri.L.J.1243

Similary, in **Haridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.**² like in the present case, the Hon'ble Apex Court held that:-

“There was no allegation in the complaint indicating, expressly or impliedly, any intentional deception on the part of the appellants right from the beginning of the transaction. The Hon'ble Apex Court drew distinction between cheating from mere breach of contract. According to the Hon'ble Apex Court, definition of cheating contemplates two separate classes of acts namely deception by fraudulent or dishonest inducement and deception by intention. Deception by fraudulent or dishonest inducement must be shown to exist right from the beginning of the transaction”.

It is not the case of the opposite party no. 2, in the present case he was deceived by fraudulent or dishonest inducement from the beginning of the transaction rather admits petitioner had paid previous transaction in time.

² (2000) 4 Supreme Court Cases 168

16. Upon perusal of copy of complaint it shows that there was no fraudulent or dishonest inducement or deception by intentional practiced by the petitioner right from the beginning of the transaction. If subsequent payment has not been made, that will not tantamount to deception, fraudulent or dishonest inducement nor would it amount to deception by intentional means right from the beginning of the transaction. Therefore, the case under Section 420/406 IPC in the facts of this case has not been made out. The opposite party no. 2 was not deceived nor induced to enter into the business transaction. That is not his case in the complaint nor there was any inducement dishonestly or fraudulently made to deliver the tea. He entered into a business transaction. The breach of contract or business transaction cannot be called cheating in the facts of this case.

Similar view was also expressed in the case of **Hari Prasad Chamaria v. Bishun Kumar Surekha and Ors**³, the Hon'ble Apex Court was dealing with a case of quashing of FIR under Section 420 IPC where the appellant had entered into a business transaction and in good faith paid large amount to respondents for starting the

³(1973) 2 SCC 823

business. Respondents neither started the business in their own names and refused to render accounts nor were money refunded by that appellant. The question before the Hon'ble Apex Court arose whether in such circumstances respondents could be held criminally liable under Section 420 IPC. While negating the plea of the appellant, the Hon'ble Apex Court observed that even assuming prima facie all the allegations in the complaint to be true they merely amount to a breach of contract and could not give rise to criminal prosecution.

17. In the light of above observations together with averments contained in the Court complaint, this Court finds ingredient of the offences alleged by the opposite party no. 2 are missing. Merely because payment has not been made or accounts have not been settled, it does not constitute offences punishable under Sections 406/411/417/418/420/422 of the Indian Penal Code. The disputes between the parties are purely civil in nature and criminal proceeding in such a civil nature case should not be allowed to be continued any further against the present petitioner.

18. Accordingly, the complaint proceeding being C.S. No. 15180 of 2021 pending before the learned Court of the 19th Metropolitan Magistrate at Calcutta in connection with offences punishable under Sections 406/411/417/418/420/422 of the Indian Penal Code, 1860 is hereby quashed.

19. C.R.R. 1221 of 2021 is, thus, allowed.

20. CRAN 1 of 2021 is also disposed of.

21. There will be no order as to costs.

22. Parties are given liberty to pursue their remedy under the civil law as may be available to the parties.

23. Concerned department is directed to communicate this order to the Learned Court below for information and necessary compliance.

24. Photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)