

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay.

CRR 948 of 2013

**M/s. Sheetal Ply Agency & Anr.
Vs.
Jitendra Kumar Sharma**

For the petitioner : Mr. Brajesh Jha
Mr. Abhijit Saha

For the State : Ms. Sreyashee Biswas

Heard on : 05.01.2023

Judgement on : 17.03.2023

ANANYA BANDYOPADHYAY, J.:

1. This revisional application has been filed under Section 482 of the Code of Criminal Procedure for quashing the proceedings of C-4147 of 2012 T.R.-740 of 2012 under Sections 420/406/120B of the Indian Penal Code, pending before the Court of the 5th Judicial Magistrate, South 24 Parganas, Alipore.

2. A complaint was filed on 27.07.2012 before the learned Trial Court by the opposite party as the authorised signatory of M/S Mayur Ply Industries Pvt. Ltd. having its office at 571, New Alipore Gurukunj Building, 'N' Block, Flat No.301 Kolkata- 700053, Police Station- New Alipore and Depo situated at 306/2439/2440 M.G. Road, Motilal Nagar No.2 opposite- Ganesh Maidan Goregaon (W), Mumbai-400090.
3. The complaint precisely stated in the month of December,2011 the accused persons represented themselves to be businessmen trading in the name and style of M/S Sheetal Ply Agency having its office at LCG-gala No.1, near Dath Mandir, L.B.S. Marg Kurla (W) Mumbai – 400070. The accused persons came to the aforesaid New Alipore office of the complainant and approached the same to supply 1029 pieces of Plywood and 165 pieces of Board of various sizes and rates on credit basis assuring to pay the entire cost amount within one month from the date of despatch of the said goods. The goods as demanded were supplied to the accused persons against the bills raised by the complainant mentioned in the complaint, on faith of payment and the said bills were received by the accused persons without objection after acknowledgement of the goods with assurance of payment within time. However the accused persons did not keep their promise to pay the cost of goods supplied on several demands on different pleas. On 21.05.2012 the accused persons arrived at the New Alipore Office of the complainant and

denied having acknowledged the aforesaid transaction of goods supplied to them and denied to pay for the same in presence of the witnesses and asked the complainant to do whatever he liked. Ultimately the complaint was filed under Section 420/406/120B of the Indian Penal Code.

4. The Learned Advocate for the petitioner Mr. Brajesh Jha submitted that the Learned Trial Court did not comply with the provision u/s 202 of the CrPC. Both the parties are the residents of Mumbai; the opposite party did not appear before the court despite several notices sent to him. The dispute is civil in nature. Both the parties had business transaction over a considerable period of time and the dispute in question does not fall within the ambit of S.420 and S.406 read with Section 120B of the Indian Penal Code and accordingly the proceeding pending before the Learned Trial Court should be quashed.
5. None appeared for the opposite party on 29.08.2022.
6. The Learned Advocate for the State in compliance to order dated 16.8.2022 filed a report that no person by the name of 'Jitendra Kumar Sharma' resided within the premises 571 New Alipore, Gurukunj Building, 'N' Block, Flat No 301, PS – New Alipore, Kolkata-700053.
7. A report received from the office of the Learned Registrar Administration (L & OM) revealed that the opposite party i.e. Jitendra Kumar Sharma could not be found at the given address.

8. The State was not represented on the date of hearing. The case has been pending for a long time and required to be disposed of.
9. The application filed under Section 482 of the Code of Criminal Procedure inter alia stated in the year 2007 the petitioner in course of his business came in contact with Timtech India Pvt. Ltd. owned by the opposite party and entered into business transaction with him. In the year 2011, the petitioners were to transact with Mayur Ply Industries Pvt. Ltd. instead of Timtech India Pvt. Ltd. Henceforth several transactions occasioned between the parties on due payment of goods supplied.
10. It was further contended that the goods purchased vide bill No.10130 dated 19.12.2011 and bill No.22080 dated 30.12.2011 were defective, contrary to the specification resulting into a dispute between the parties. Thereafter the petitioners were summoned to appear before the Learned Judicial Magistrate 5th Court at Alipore in complaint Case No. 414 of 2012.

Section 420 of IPC states as follows:

“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”.

Section 406 of IPC states as follows:

*“ Punishment for criminal breach of trust.—
Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

11. The Ledger Account of petitioner’s company viz M/s Sheetal Ply Agency marked Annexure P-1, Photocopies of Tax Invoices marked as Annexure P-2 evince the business transactions between the parties in vogue since the year 2007 contrary to the statement of the complainant to have known the petitioners for the first time in the year 2011. The complainant did not disclose of the earlier business transactions between the parties. The facts of the instant case do not attract the ingredients of Section 420 and Section 406 IPC to indict the petitioners with criminal liability.
12. The Annexure marked as P1 and P2 mentioned, ‘any dispute subject to Kolkata jurisdiction,’ though the address of both the parties stated in the said documents are of Mumbai.
13. However the nature of dispute between the parties does not call for the interference of the Learned Trial Court dealing with criminal

jurisdiction and to allow to proceed with the case will result into abuse of the process of law, where the basic complaint is suppressive of material facts and demonstrate contradictions.

14. Accordingly, the criminal revisional application being CRR 948 of 2013 is allowed.
15. Proceedings being C-4147 of 2012 T.R. Case No. 740 of 2012 under Sections 420/406/120B of the Indian Penal Code pending before the Court of the learned 5th Judicial Magistrate, South 24-Parganas, Alipore is accordingly quashed.
16. Connected application if any is also disposed of accordingly.
17. There is no order as to cost.
18. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.
19. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(ANANYA BANDYOPADHYAY, J.)