

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

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 1916 of 2016

With

CRAN 6 of 2018 (Old No. CRAN 2294 of 2018)

With

CRAN 9 of 2020 (Old No. CRAN 977 of 2020)

Dipak Kumar Rudra

Vs.

Mohar Ali

For the petitioners

: Mr. Debasis Roy,
Mr. Apurba Kumar Datta,
Ms. Sreemoyee Mukherjee.

For the OP

: Mr. Prosenjit Mukherjee,,
Ms. Poulami Dutta.

Hearing Concluded on

: 13/02/2023

Judgment on

: 23/02/2023

Rai Chattopadhyay,J.

1. In this revision, the petitioners have primarily challenged the order of the Trial Court dated 4th April, 2016, rejecting his petition for discharge. The petitioners have in effect challenged in this revision the complaint and the

subsequent proceedings thereof in C.R. Case No. 823 of 2010 under Section 420/34 of the Indian Penal Code pending in the Trial Court i.e., Judicial Magistrate, 1st Class, 2nd Court, Jangipur, Murshidabad.

2. The opposite party is the complainant in the Trial Court. He has lodged the complaint on 18th September, 2010 alleging against the present petitioners, inter alia, that the petitioners being the owner and officers of the showroom “Rudra Automobiles” had previously transferred to him on sale a care being WB41D1527 in lieu of Rs.3,30,000/-, though without adequate and appropriate documents relating to the insurance of the said car.
3. According to the complainant/opposite party the said transaction in lieu of money by the present petitioners were deceptive and an act of cheating committed by the petitioners upon the complainant, in so far as at the time of sale the petitioners being the owner of the showroom had given complainant to understand that all the necessary formalities were being maintained and the documents were being handed over relating to the car, to the purchaser, that is the complainant.
4. In the said complaint, the complainant has also mentioned about the said purchased car to have met with an accident and revealing of the incident of cheating by the present petitioners, when actually the complainant went to realize the insurance, for the car. The complainant was examined under Section 200 of the Code of Criminal Procedure, by the Magistrate on 1st

October, 2010 and the cognizance of the offence was taken by the Magistrate in the case.

5. Mr. Roy, learned Advocate appearing for the petitioners has revealed the grievance of the petitioners in the following manner:

Firstly, that there has not been any transaction between the petitioners and the complainant of any car as alleged, hence accordingly, the entire allegation made in the said complaint against the petitioners is only manufactured and concocted, that the complainant bringing up such manufactured allegations against the petitioners renders the same to be only malicious whereupon no criminal case should be allowed to be maintained or proceeded with.

6. During argument learned Advocate has relied on the statement of the complainant made before the police in connection with some other police case, to emphasize that the complainant has himself claimed therein to have purchased the concerned vehicle from some other person, than the present petitioners. He has named his vendor to be one Sisir Kumar Ghosh.
7. The document is annexed with the supplementary affidavit submitted by the petitioners in this case.
8. On the above premises, according to Mr. Roy, appearing for the petitioners the criminal case being C.R. Case No. 823 of 2010 under Sections 420/34

of the Indian Penal Code against his clients, is not maintainable and is a fit case for this Court to invoke its power under Section 482 of the Code of Criminal Procedure to quash and set aside the same.

9. The following three cases were referred to by him for the petitioners:

- i. ***State of Haryana & Ors. vs. Bhajanlal & Ors.*** reported in **1992 Supp. (1) Supreme Court Cases 335.**
- ii. ***Hirak Chand Dawn vs. Mohar Chand Dawn & Ors.*** reported in **1997 (II) CHN 467.**
- iii. ***Buddhadeb Ghosh vs. Rina Mal*** reported in **(2006) 2 C CrLR (Cal) 536.**

10. Vehement objection has been raised on behalf of the opposite party.

11. Mr. Mukherjee, learned Advocate appearing for the opposite party has argued that according to the settled principles of law, this Court shall be empowered only to examine if any cognizable case has been made out against the accused persons/petitioners in the complaint or not. According to him, *prima facie* presence of the ingredients of offence as alleged against the petitioners would suffice to drive this Court not to interfere with a criminal proceeding initiated against them.

12. During his argument, he has relied on a report submitted by the police in the Trial Court in connection with the said case. It has been pointed out

that in the police report as above, after preliminary enquiry the police has noted purchase of the concerned vehicle from “Rudra Automobiles” by the complainant. According to him, in view of this report and the allegations made in the complaint, there can be no scope to find absence of sufficient material against the petitioners. Therefore, according to him, the settled principles of law should govern this Court not to interfere with the criminal proceedings against the petitioners.

13. No doubt it is settled that a Court sitting in a jurisdiction vested under section 482 of the Code of Criminal Procedure would be required to look into the fact whether the complaint and the allegations levelled therein have constituted any *prima facie* offence or made out any case against the accused persons or not, to interfere into the proceedings initiated pursuant to the said complaint.
14. The Court has also to see if the criminal proceedings initiated against the accused persons is manifestly attended with *mala fide* or malice, to pose a threat to its credibility.
15. These principles are well-settled through numerous judgments of the Constitutional Courts including that referred to in this Court on behalf of the petitioners, that is, ***State of Haryana & Ors. vs. Bhajanlal & Ors.*** reported in ***1992 Supp. (1) Supreme Court Cases 335.***

- 16.** So far as the facts of the present case are concerned, the opposite party/complainant has come up with the complaint as mentioned above alleging purchase of vehicle from “Rudra Automobiles” owned by the present petitioners and deception by the present petitioners as the officers of the said Company by not providing adequate documents and facilities for purchase of the said car.
- 17.** However, though allegations have been made and the complainant has also made statement before the Judicial Magistrate under Section 200 of the Code of Criminal Procedure, he has not relied upon any other sufficient document to substantiate his claim of purchase of any car from the petitioners’ company. This would have been imperative for him to submit adequately in support of his purchase from the petitioner’s company, over and above statements made by him either in the complaint or before the Magistrate, more so in view of the fact that the entire dispute between the parties is based upon the question as to from whom the complainant has purchased the vehicle.
- 18.** This is for the reason that the vendor would only have the liability of handing over the entire connected documents to the purchaser at the time of sale of a car. Any malpractice or deception as alleged would be a stake upon the vendor and no one else.

- 19.** Accordingly, to substantiate his allegations against the petitioners the complainant should have come up with sufficient evidence to construe, at least *prima facie* that the present petitioners are the vendors to the complainant.
- 20.** Upon careful perusal of the materials in this case, I am constrained to hold that the complainant has not been able to bring on record any such sufficient material in this case. It is needless to mention that in order to bring on record the allegations under Section 420 of the Code of Criminal Procedure against any person, the complainant is to bring on record at least *prima facie* the ingredients of offence of “cheating” has envisaged under Section 415 of the Indian Penal Code, that is, inducement from the very initiation of a transaction between them and deception by inducing the complainant, to secure wrongful gain by the accused person.
- 21.** Obviously, no such ingredient of offence has been brought on record by the complainant against the present petitioners. there is also not even any iota of material to show any monetary transaction between the parties.
- 22.** Therefore, in absence of any such material as discussed above, and following the settled principles of law as discussed above, I do not find any cogent ground and that sufficient enough, not to exercise this Court’s power under Section 482 of the Code of Criminal Procedure in the present case, to interfere with the criminal proceedings against the petitioners.

- 23.** It is found that the complaint dated 18th September, 2010 against the present petitioners has not disclosed any offence or made out any case against the petitioners. Accordingly, the entire criminal case against the petitioner is unsubstantiated. Possibility of the case being lodged maliciously and motivatively can also not be ruled out. This must prompt this Court to find that the complaint dated 18th September, 2010 against the petitioners should not be proceeded with any further or else the same shall amount to gross abuse of the process of Court and that of law as well.
- 24.** On the above premise, the case being C.R. 823 of 2010 under Section 420/34 of the Indian Penal Code pending in the Court of Judicial Magistrate, 1st Class, 2nd Court, Jangipur, Murshidabad is quashed and set aside. Hence, this revision succeeds.
- 25.** Any application of the petitioners, if pending, and the application of the opposite party/complainant for vacating the interim order stand disposed of with this order.
- 26.** With the directions as above, this revision is disposed of.
- 27.** 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.)