**16.02.2023**

**Court No.35**
**Item No. 49**

**D.Hira**

**<u>CRR 1947 of 2016</u>**
**<u>With</u>**
**<u>CRAN 2 of 2016 (Old No. CRAN 3713 of 2016)</u>**

**Uday Shankar Chakraborty**
**Vs.**
**The State of West Bengal & Anr.**

Mr. Asimes Goswami,
Mr. Abdus Salam,
Mr. Subrata Mukherjee,
Ms. Paulomi Banerjee.
… for the petitioner

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose.
… for the State

Affidavit-of-service filed in Court today is taken on record.

This is a case preferred by the petitioner under the provisions of Section 482 read with Section 401 of the Code of Criminal Procedure to challenge the proceedings in connection with Amta Police Station Case No. 263 of 2014 dated 27th August, 2014 under Section 417/418/419/420/406 of the Indian Penal Code.

The police case was registered pursuant to a FIR filed by the opposite party no. 2 in this case, on the same date, in the said police station. The crux of the FIR and allegations levelled against the petitioner would be that the petitioner impersonating himself as a lawyer of the High Court induced deceitfully the opposite parties to part with an amount of Rs.1,00,000/- at the first instance and, thereafter, an amount of Rs.4,50,000/-, on various other dates, from the defacto complainant.

The reason as to why the defacto complainant has remitted such huge amount of money to the petitioner is to arrange for the defacto complainant a license under the Bengal Exercise Act, 1909 for setting up a foreign liquor shop, for retail sale of liquor and certain other intoxicants.

The bone of contention of the complainant against the present petitioner is that in spite of taking such huge amount of money, the petitioner has never done the job for which the money was given to him. It is also alleged that the petitioner has all along deceived and duped the defacto complainant to procure the said amount of money, against a job regarding which he had no intention to complete or do the same for the defacto complainant.

Basically on these allegations, the said FIR was lodged against the petitioner. The petitioner being aggrieved with lodging of such FIR and the further criminal proceedings, as initiated against him and has come up for quashing of the same by filing the present case.

Mr. Goswami, learned Advocate appearing for the petitioner has pointed out to the fact that the case is purely civil in nature. He has pointed out to a document annexed with the revisional application to say that the relationship between the parties started pursuant to an agreement whereas he has also relied on the two orders of the Coordinate Bench of this Court dated $6^{th}$ March, 2014 and $8^{th}$ July, 2015, to submit that there is sufficient material on record to substantiate petitioner's claim that he had no intention to deceive the defacto complainant and cheat him. It is emphatically submitted that the amount taken has been spent in litigations and it cannot be said that the petitioner has used the same for any wrongful gain.

It is also submitted on behalf of the petitioner that not obtaining a liquor license for which the money was taken, is not an act of cheating but only failure to leave up to the promise and only *bona fide.*

Mr. Goswami, has emphatically submitted that no ingredients of offence of cheating can be found from the FIR against his client so that this Court would construe that a cognizable offence and a triable case have been made against his client.

Under such circumstances, according to Mr. Goswami, there is ample scope for this Court to exercise power under Section 482 of the

Code of Criminal Procedure to interfere with the criminal proceeding pursuant to the FIR as mentioned above.

Mr. Agarwala, learned Advocate appearing for the State has raised strong objection against such contention and prayer of the petitioner.

On the basis of the materials available in case diary he says that the petitioner's action is nothing but cheating as he has impersonated himself and duped a huge amount of money from the defacto complainant and others.

For the rest he has left the matter at the discretion of the Court.

Receiving the alleged amount of money by the present petitioner from the defacto complainant and receiving the same for the purpose of obtaining a license for liquor under the provisions of Bengal Exercise Act, 1909 are the facts, not disputed in this case by the petitioner.

It is noted that an "agreement" has been relied on by the petitioner to submit that their relationship is contractual and civil in nature which was initiated by the said agreement. The agreement is annexed with this petition. Unfortunately, it is noted that the same is nothing but a written document stating therein that the petitioner has taken Rs.4,50,000/- from the opposite party no. 2 for obtaining the liquor shop license and an undertaking to repay the said money as he has failed to obtain any such license.

This Court has also perused the two orders of the Coordinate Bench of this Court as relied on by the petitioner.

One is for dismissal of the writ petition for default and had no bearing to this case. The other is the finding and direction of the Court that in absence of any advertisement issued by the department, the petitioner had no right to apply for issuance of license *suo motu*. The Court dismissed the writ petition. Both the cases, therefore, stand on different perspective all together from the scope of the matter which is under consideration of this revision Court. It is only a falacy and misconception that anything to show the petitioner to have spent the money obtained by him from the defacto complainant in Court cases would render him free from any liability of deceiving or cheating the defacto complainant. Instead, it is for this Court to see if the allegations made in the FIR would constitute a cognizable offence or not and that the ingredients of offence of cheating as enumerated in law, if have been spelt out therein or not.

In that case this Court in exercise of its extraordinary power should not and would not interfere into the criminal proceedings as started against the petitioner.

The ingredients of offence of cheating may be found out under Section 415 of the Indian Penal Code which may be extracted for bravity of discussion as hereinbelow:-

> **"415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".**
>
> ***Explanation.*—A dishonest concealment of facts is a deception within the meaning of this section."**

There are several illustrations provided in the statute.

As it has already been pointed out that the agreement which the petitioner has relied on as the starting point of their contractual relationship, is only a mere undertaking to repay the amount of money, he has taken from the defacto complainant and has no tenets of an enforceable agreement. That is not to be considered in this case.

The FIR against the petitioner clearly suggests about his taking money for a particular purpose. It is also clearly revealing that the petitioner has never ever taken any step towards the purpose for which he has admittedly taken the money. Plea of the petitioner's *bona fide* intention and ignorance of law resulting into his failure to execute the job, in spite of having *bona fide* intention to accomplish the same, should confront with the well-known principle that ignorance of law is not a good ground to show innocence. "To aver in a Court of justice that they have mistaken the law is a plea no Court is at liberty to receive". (The Cherlotta (1814) 1 Dods. Adm 387, 392 Sir W. Scott).

Case diary is also revealing the fact that the petitioner has never returned back the amount of money taken by him for a particular purpose after having failed to fulfill the same. The *bona fide* as claimed by the petitioner is only illusive in view of his sheer inaction towards executing the job for which he has taken the money. Hence, therefore, sufficient material to *prima facie* construe against him that he has deceived the defacto complainant from the very inception by promising false and fraudulent to him to procure the amount of money are evident.

Accordingly, in this case, there are sufficient materials to *prima facie* find that a cognizable case has been made out against the petitioner, in the FIR.

It would be beneficial to refer to one of the decisions of Hon'ble Supreme Court, though there are numerous others, i.e., reported in ***(2015) 7 SCC 423 (Manik Taneja vs. State of Karnataka)*** , when the Hon'ble Court has been pleased to say that in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, the Court should be extremely cautious to interfere with the investigation or trial of a criminal case and should not stall that, save and except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of offence and that the continuance of criminal prosecution would accept to abuse of process of the Court.

Under such circumstances, and in accordance with the settled principles of law, there is no scope for this Court to exercise its extraordinary and inherent jurisdiction under Section 482 of the Code of Criminal Procedure to interfere into te criminal proceedings initiated against the petitioner pursuant to the Amta Police Station Case No. 263

of 2014 dated 27th August, 2014 under Section 417/418/419/420/406 of the Indian Penal Code.

Hence, this revision does not succeed.

CRR 1947 of 2016 is dismissed, however, without costs.

Since charge-sheet has already been submitted in this case, it is expected that the Trial Court shall proceed with the trial of the case as expeditiously as possible, if necessary giving it some precedence and without granting unnecessary adjournments to any party thereof.

Case diary be returned.

All pending applications, if any, are consequently disposed of.

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.)**