**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 1772 of 2019**

**Nirmal Panda**

**Vs**

**Messers Greenply Industries Limited**

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| **For the Petitioner** | : | Mr. Uday Sankar Chattopadhyay,<br>Mr. Santanu Maji,<br>Ms. Trisha Rakshit,<br>Mr. Subhayu Das,<br>Ms. Rajashree Tha. |
| **For the Opposite Party** | : | Mr. Ayan Bhattacharjee,<br>Mr. Kausik De,<br>Ms. Mohini Majumder. |
| Heard on | : | 23.02.2023 |
| Judgment on | : | 14.03.2023 |

**Shampa Dutt (Paul), J.:**

The present revision has been preferred praying for quashing of the proceeding being Complaint Case No. C- 3431 of 2017 under Sections 420/465/467/468/471/474/408/384/403/506 of the Indian Penal Code, pending before the Learned 3rd Judicial Magistrate, Alipore.

The petitioner's case is that the petitioner is an expert in wall cover business and he pursued his post Graduate Diploma in Executive Management under Institute of Management Technology, Ghaziabad in the year 2005-2006.

The complaint company through its head hunting consultant KRIZALIS MANAGEMENT CONSULTING, Bangalore approached the petitioner and persuaded him for the post of GM-wall covers during the period October-November 2014, as the petitioner is a Subject Matter Expert and well known in the Home furnishing Industry. The interview happened in October 2014 telephonically initially by HR Manager Mr. Suan followed by the then Country Head (Ply division) Mr. Vinit Tiwari. Later in the month of November 2014, the Managing Director of the company namely Mr. Rajesh Mittal, came to Delhi to meet the petitioner in person and persuaded the petitioner to join the complainant company and ultimately on 09.02.2015, the petitioner joined the said company.

The petitioner was forced to resign from his post on 04.01.2017, without assigning any reason with a promise to settle all the dues/consideration as per the terms of employment. The petitioner protested against the same and requested the company to allow him to continue the service for three months but the complainant company forced the petitioner to write his own resignation and accordingly on 04.01.2017, the petitioner resigned from his service and the same was accepted.

On 19.08.2017, the complainant/company namely Messers Greenply Industries Limited filed a suit for recovery of sum of Rs. 1008810/- along with pendente lite and future interest at the rate of 18% per annum from the petitioner, before the Learned District Judge, Saket Court, New Delhi. The said suit has been registered as CS No. 746 of 2017, and is pending. The petitioner being the defendant filed an affidavit in the said suit.

The petitioner also filed a suit for recovery of arrears of salary and other dues as per the employment contract dated 24.02.2015 and company policy and damages before the Learned District Judge (West District), Tis Hazari Court, New Delhi, being Civil Suit No. 1071 of 2017.

All on a sudden on 16.10.2017, the complainant company filed a petition of complaint under Section 200 of the Code of Criminal Procedure, before the Learned Chief Judicial Magistrate, Alipore under

Sections 420/465/467/468/471/474/408/384/403/506 of the Indian Penal Code and the said complaint has been registered as Complaint Case No. C – 3431 of 2017.

The prosecution case in brief is that the accused/petitioner after being appointed took over the office at Kolkata situated at Madgul Lounge, 223 Chetla Central Road, Police Station – Chetla, Kolkata-700027, and started working in the post of AVP Sales, wall cover division. The accused person was hired only on the basis of his experience certificate and other documents including his self declared resume as submitted with the company. From the every inception the accused person with an intention to cheat the complainant, thereby causing wrongful loss to the complainant company, forged and fabricated documents and submitted them to the complainant company thereby inducing the complainant to offer him the post of AVP Sales, wall cover division at an annual salary of Rs. 2800000/- and thus has misappropriated a total sum of Rs. 66678827/- till date from the complainant company in the name of his purported salary, incentives and bonus, driver and fuel expenses, LTA reimbursement, travelling expenses and other sundries. During his tenure as an employee with the complainant company the accused person started placing orders here and there for wall covers without any reason and without permission of the complainant company authority even when those were not required. The accused person specifically during his employment, under the colour and cover of his authority and position placed double orders for wallpapers of different designs and colours on 07.10.2016 through a system generated PO9490000315 worth Rs. 2143021/-, which was not required and thus has misused his position and trust and belief so reposed upon him by the complainant company and thus has purposely committed the offence of criminal breach of trust. It has been further alleged that the accused person resigned from his job abruptly on 04.01.2017, even without serving notice of 90 days and since thereafter the management of the company has been constantly trying to communicate with the accused and requested him to give back those articles and valuable documents belonging to the complainant company but with an intent to commit extortion, the accused person started demanding hefty amount of money in lieu of those articles and documents and thereby had made the complainant company to part with a hefty amount of Rs. 545256/- which the accused was not legally entitled to get, but even after receiving the money the accused person did not return back the articles of the company.

**Mr. Uday Sankar Chattopadhyay, learned counsel for the petitioner** has submitted that on the basis of the self same dispute the opposite party/complainant had earlier filed a civil suit and the same is pending before the Learned District Judge, Saket Court and the accused person has also filed a suit before the Learned District Judge

(West District), Tis Hazari Court, New Delhi, for recovery of his dues. Both matters are still pending.

**Mr. Chattopadhyay** has further submitted that it is settled principle of law that in order to attract the penal provisions for cheating, the ingredients of fraudulent or dishonest intention from the beginning of the transaction should be present; a mere loss in business does not constitute cheating.

That in the instant case, no such offence took place as alleged which could attract the ingredients/provisions of Sections 420/465/467/468/471/474/408/384/403/506 of the Indian Penal Code.

That there was no inducement or fraudulent or dishonest intention on part of the petitioner.

The instant case is nothing but a dispute between the employer and an employee and the same cannot be termed as cheating.

That a civil suit is already pending against the petitioner and as such in any case, there is no occasion for the complainant/opposite party to prosecute the petitioner under Sections 420/465/467/468/471/474/408/384/403/506 of the Indian Penal Code and the instant complaint filed by the opposite party is an abuse of the process of law. The instant proceeding against the petitioner is thus liable to be quashed.

**Mr. Chattopadhyay** has relied upon the following judgements:-

a) B. Suresh Yadav vs. Sharifa Bee and Anr., (2007) 13 SCC 107, Criminal Appeal No. 1444 of 2007, on October 12, 2007.

b) V. Y. Jose & Anr. Vs State of Gujarat and Anr., (2009) 3 SCC 78, Criminal Appeal No. 2048 of 2008, on December 16, 2008.

**Mr. Ayan Bhattacharya, the learned counsel for the opposite party** has submitted that here is sufficient materials and evidence on record against the petitioner to proceed towards trial and as such the revision is liable to be dismissed.

A Copy of the restoration application praying for restoration of the suit in CS DJ 746 of 2017 has been filed by the opposite party/company before the Saket Court and the same is pending hearing.

On hearing the learned counsels and considering the material on record. The following facts are before the court:-

1) The petitioner was appointed on 24.02.2015.
2) He resigned on 04.01.2017 allegedly with notice.

3) The petitioner has filed a recovery suit against the company in Tis Hazari Court (C.S. No. 1071 of 2017).

4) The opposite party/Company has also filed a recovery suit against the petitioner in Saket Court (C.S. No. 746 of 2017………. now pending for restoration after dismissal).

5) The opposite party has filed an application praying for Vacating of the interim order annexing a report dated 15th December 2016, of a private agency regarding the verification of all documents of the petitioner after almost one year ten months from the date of joining of the petitioner.

   (a) Regarding Educational qualifications the report states:-

   > *"The documents submitted by Mr. Nirmal Panda with respect to his educational qualifications could not be verified."*

   (b) Regarding Employment History it is stated:-

   > *"Verification/investigation was conducted with the previous employer namely, Messrs Floor & Furnishings Pvt. Ltd. and it was found that certain claims made by Mr. Nirmal Panda are wrong and he has lied in his resume and forged the documents to support the same."*

6) The only finding against the petitioner is that ……….. he stated falsely in his resume that he has resigned from his previous job. Whereas the petitioner was terminated from his previous service.

**The present case has been filed against the petitioner on 16.10.2017** under Sections 420/465/467/468/471/474/408/384/403/506 of the Indian Penal Code, **ten months after the petitioner's resignation**.

**Section 420 of the Indian Penal Code, lays down:-**

> *"**420. 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.*
>
> ***Ingredients of offence.—** The essential ingredients of the offence under Sec. 420 are as follows:-*
>
> *(1) There should be fraudulent or dishonest inducement of a person by deceiving him;*
>
> *(2) (a)The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*
>
> *(b) the person so induced to do anything which he would not do or omit if he were not so deceived, and*
>
> *(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.*
>
> *The two essential ingredients of the offence under this section are –*
>
> *(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and*
>
> *(B) Inducing the person deceived to part with property."*

In the present case, there is absence of Men's rea and also dishonest intention as a person normally would like his resume to be perfect. Stating that he resigned instead of termination is only may be to create a good impression.

Delivery of property (Salary) to the petitioner is against the service rendered by him. There is no case that the petitioner did not perform his duty as per job allotted.

In **Pawan Kumar vs Union of India & Anr., Civil Appeal No(s). 3574 of 2022, On May 02, 2022,** the Supreme Court held:-

> *"**10.** It may be noticed that **while a recruit is selected and before he is formally appointed, his character/antecedents have to be verified and after due verification if the recruit is found suitable for the post, may be considered for appointment** as a member of the force. What is required that after the verification of character/antecedents of the recruit has taken place, it presupposes and casts an obligation on the appointing/competent authority to take into consideration as to whether the kind of suppression of alleged information/false declaration holds him suitable for appointment to the force, in terms of Rule 52 of the Rules 1987.*
>
> ***11.** This cannot be disputed that the candidate who intends to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. **It goes without saying that the yardstick/standard which has to be applied with***

***regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard.***

***12.*** *Earlier, there has been a conflict of opinion in the various decisions of Division Benches of this Court and at the stage when the Division Bench of the High Court dismissed the writ petition under the impugned order dated 17th November, 2015, there were divergent views of this Court and that came to be later settled by a three Judge Bench of this Court in* ***Avtar Singh v. Union of India and others.*** *While summarizing the conclusion,* ***this Court has laid down broad guidelines*** *which has to be taken note of by the appointing/competent authority in dealing with the matters where there is a suppression of material information or disclosure of false information and after reconciling the earlier judgments succinctly summarized the conclusions as under:*

> *"****34.*** *No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.*
>
> ***35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter.*** *The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and* ***exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.***
>
> ***36.*** *What yardstick is to be applied has to depend upon the nature of post, higher post*

*would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.*

***37.*** *The "McCarthyism" is antithesis to constitutional goal,* ***chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformative theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.***

***38.*** *We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:*

***38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.***

***38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.***

***38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.***

***38.4. In case there is suppression or false information of involvement in a criminal case*** *where conviction or acquittal had already been recorded before filling of* *the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:*

***38.4.1.*** *In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.*

***38.4.2.*** *Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.*

***38.4.3.*** *If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.*

***38.5.*** *In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*

***38.6.*** *In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.*

***38.7.*** *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

> ***38.8.*** *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*
>
> ***38.9.*** *In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*
>
> ***38.10.*** *For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.*
>
> ***38.11.*** *Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."*

***13.*** *What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can*

> *arbitrarily discharge/terminate the employee from service."*

**In the present case** there is no suppression of any information regarding any criminal case/conviction against the petitioner. The declaration alleged to be false. Termination/resignation is **not a material suppression** considering the alleged nature of suppression.

As such the ingredients required to constitute the offence under Section 420 IPC is prima facie not present against the petitioner.

The next offence alleged is **under Section 465 of the Indian Penal Code,** which lays down:-

> *"**465. Punishment for forgery.—**Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*
>
> ***Ingredients of offence.—** The essential ingredients of the offence under Sec. 465 are as follows:-*
>
> > *(1) The accused prepared a false document or electronic record;*
> > *(2) He did it with false meaning of written instrument for the purpose of fraud or deceit.*
> > *(3) The document or electronic record was prepared dishonestly or fraudulently,*
> > *(4) He did it with the intention of causing wrongful gain to someone and wrongful loss to another."*

Here no false documents were prepared. A statement as discussed was made to create a good impression (not any material suppression).

Thus the ingredient required to constitute the offence under Section 465 IPC is also prima facie not present.

Sections 467/468/471/474 IPC thus become inapplicable.

The ingredients required to constitute offences under Sections 384/403/506 IPC are also clearly missing in this case.

Accordingly there being no materials to prima facie make out a case of cognizable offences as alleged against the petitioner, the proceedings in this case is liable to be quashed in the interest of justice.

**CRR 1772 of 2019 is allowed.**

The proceeding being Complaint Case No.C- 3431 of 2017 under Sections 420/465/467/468/471/474/408/384/403/506 of the Indian Penal Code against the petitioner pending before the Learned 3rd Judicial Magistrate, Alipore, is quashed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**