

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. - 2565 of 2017

IN THE MATTER OF

Hitesh Prahlad Bhatia @ Hitesh Prem Bhatia & Anr.

Vs.

Deepak Raghani.

with

C.R.R. No. - 2566 of 2017

IN THE MATTER OF

M/s H.N. Safal Realtech LLP & Ors.

Vs.

Dilip Raghani.

with

C.R.R. No. - 2568 of 2017

IN THE MATTER OF

M/s H.N. Safal Realtech LLP & Ors.

Vs.

Deepak Raghani.

with

C.R.R. No. - 1864 of 2017

IN THE MATTER OF

M/s H.N. Safal Realtech LLP & Ors.

Vs.

Deepak Raghani.

**For the Petitioners : Mr. Brajesh Jah, Adv.,
Ms. Jonaki Saha, Adv.,**

Mr. Abhijit Saha, Adv.

**For the opposite party : Mr. Arnab Roy, Adv.,
Mr. Soumyadeep Mukherjee, Adv.,
Ms. Ishita Roy, Adv.**

Judgment on : 27.04.2023

Subhendu Samanta, J.

These criminal revisions were preferred for quashing of a criminal proceedings being no C.S 21336/17, C.S. 34652/17, C.S. 34649/17 pending before the Learned jurisdictional Magistrate u/s 406/409/420/465/467/468/506 read with 120B/34 IPC.

The brief fact of the petition is that the petitioner no. 1 is the Limited Liability Partnership Firm and other petitioners are the office bearer/designated partner of said Firm. The opposite party and his brother are the real estate investor who had on earlier occasion invested and purchased office premises in other projects developed by the petitioners. Thereafter some times in 2014-2015 the opposite party came to know that the petitioner is coming with a new project and as such the opposite party and his brothers approached the petitioner for

purchase few office space on the said new up- coming project. As there were previous acquaintance and transactions between them, the OP and his brother entered into an agreement to purchase some office space. The applications were signed between them and according to agreement and usual practice OP and his brother handed over requisite post dated cheques for the full basic price. The post dated cheques were to be dropped for encashment on the date mentioned of the cheque. Initially after that the petitioner started depositing the said post dated cheque one after another for encashment but it appears that several post dated cheques were dishonoured with a memo from the banker of the opposite party with an intimation that "account closed" has been closed and some were mentioned "insufficient funds". Thereafter the present petitioner serves several demand notice upon the opposite parties but the demand notices were returned un-served. Thereafter the petitioner somehow received the e-mail address of the opposite party and sent a notice through e-mail to opposite party inter alia demanding the outstanding payments for the office space. In reply to the said e-mail the opposite party has made a false story regarding cash payment of huge money and demand of original money receipt and so called diary. Petitioners denied the claim, suddenly, the petitioner

has received the summons of the Learned Magistrate concerned.

It is the submission of the Learned Advocate for the petitioner that the opposite party has initiated the criminal proceeding with some false and concocted story. The petitioner is living outside the jurisdiction of the Learned Magistrate and the Learned Magistrate without conducting the proper inquiry u/s 202 (1) Cr.P.C. issued the process illegally. He further pointed out that the present opposite party deliberately closed his bank account instead of payments of post dated cheques to the petitioner. He again argued that if the instant criminal proceeding is allowed to be continued the petitioner shall suffer irreparable lost and injury and it would be abuse of process of court.

The case of the opposite party/complainant is that, the opposite party and his brother was previously acquainted with the petitioner firm. The agents of the petitioner firm i.e. accused/petitioner no. 4, 5 and 6 and 7 made contact with the representatives of the complainant and impressed them in a meeting that they shall construct a new tower around the city of Ahmedabad. On their assurances the opposite party and his brother were satisfied to book some office spaces at the said upcoming projects. The accused/petitioners also informed

about the base booking price and the mode of payment of such booking. It is the further case of the complainant that the opposite party and his brother booked some office space believing on the representations of the accused persons and at the time of booking they paid some amount in cash as well as some posted cheques were also handed over. On demand of the proper money receipt the accused persons handed over a diary wherein the cash payment was mentioned including the booked office space number, rate, discount and cash payment received by the accused persons in respect of the said unit. It has also been alleged that some manipulation was done by accused No. 6 and 7 at the said diary. The accused persons also assured the complainant and his brother that the proper money receipt would be given very soon in due course. The complainant demanded proper receipt for several times but the accused person can deferred the matter behind several excuses. Accordingly, the complainant wrote the letter dated 08.09.2016 to the accused reiterating his demand for proper receipt, the complete ledger and the execution of the sale agreement. In reply the accused/petitioner denied for receiving the cash payment whatsoever and also denied the fact giving such diary and entries therein. Thus, the complainant has filed the complaint before the Learned Jurisdictional Magistrate.

It is the further case of the opposite party that the accused persons/ petitioner have committed fraud upon the complainant by manipulating the diary entries with respect the case payment received by them. They also committed criminal breach of trust as they received the cash payment at the time to time from the complainant against the booking of the said unit but the later denied having receipt of any cash payment. Learned Advocate for the opposite party further submitted before this court that the Learned Magistrate after considering the materials on record in the petition of complaint and after recording the evidences of complainant and his witness prima facie satisfied about the commission of offence and has taken cognizance of the offence. Learned Magistrate has also issued the process against the present petition which is not at all illegal in the eye of law. He further argued that the instant criminal revision cannot be allowed as there are sufficient prima facie materials against the present petitioners.

In support of his contention Learned Advocate for the petitioner cited the following judgments of Honb'le Supreme Court they are:

(2009) 9 SCC 682 [M.N. Ojha & Ors. Vs. Alok Kumar Srivastav & Anr.]

30. Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of

Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

(2009) 3 SCC 78 [V.Y Jose & Anr. Vs. State of Gujrat & Anr.]

21. *There exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.*

23. *Section 482 of the Code of Criminal Procedure saves the inherent power of the court. It serves a salutary purpose viz. A person should not undergo harassment of litigation for a number of years although no case has been made out against him.*

(2020) 18 SCC 730 [Surendra Nath Pandey & Anr. Vs. The State of Bihar]

Quashment in case of economic offences/commercial transactions, breach of trust, cheating, e.t.c.- Prosecution on basis of bald and

omnibus statement/allegations against appellants/accused panel advocates of bank – No specific reference to role of appellant in any conspiracy alleged- Given such facts, held, proceedings ought not to be allowed to proceed, as in the present case, the same would constitute abuse of process of court and such prosecution made in all likelihood be abortive and futile.

(2005) 13 SCC 699 [Murari Lal Gupta Vs. Gopi Sing]

In absence of any averments in the complaint so as to infer fraudulent or dishonest inducement having been made by the petitioner, pursuant to which the respondent parted with the money, it cannot be said that the petitioner had cheated the respondent- no case for prosecution under Section 420 or Section 406, even prima facie, made out.

(2019) 16 SCC 739 [Prof. R.k. Vijayasathathy & Anr. Vs. Sudha Seetharam & Anr.]

28. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.

29. In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the

appellants constitutes an abuse of process of court and is liable to be quashed.

(2002) 1 SCC 241 [S.W. Palanitkar & Ors. Vs. State of Bihar & Anr.]

8. Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position. Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.

(2018) 13 SCC 374 [MEDMEME, LLC & Ors. Vs. IHORSE BPO SOLUTIONS PRIVATE LIMITED]

14. On the basis of it, we find that it cannot be said that at the time of entering into the agreement, either the first agreement or even the second agreement, there was any intention on the part of the appellants to cheat the respondent. No suspicion of any nature was shown or even alleged. It is also not the allegation of the respondent in the complaint that the agreement was entered into with fraudulent or dishonest intention on the part of the appellants in inducing the respondent to enter into such a contract. At best, the dispute between the parties is of a civil nature, proceedings in respect of which are pending before the learned arbitrator.

(2009) 14 SCC 696 [Dalip Kaur & Ors Vs. Jagnar Sing & Ors]

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar

is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the penal Code.

Learned Advocate for the opposite party controverted some of the judgments advanced by Learned Advocate for the petitioner of their legal value and applicability in respect of this particular case.

Learned Advocate for the opposite party cited a decision reported in **(1985) 2 SCC 370 [Pratibha Rani Vs. Suraj Kumar & Anr]**

Section 482- petition for quashing of complaint-Court's prima facie satisfaction must be based on the allegations made in the complaint taking them to be correct-if allegations constituting the offence alleged are made, the court should be reluctant to interfere.

Heard, the Learned Advocates. Perused the materials on record and also perused the cases of the respective parties. The case of the complainant is totally contrast to the case of the present petitioner.

It is the admitted fact of this particular case that the parties were well known to each other and prior to the alleged transaction they had their business transaction successfully completed in the year 2014-15 in respect of booking of some office space of the complainant and his brother and in another project of the present petitioner. It has also admitted fact that

the parties had entered into the agreement and understanding for booking of some office spaces in a new upcoming project. By virtue of such agreement between the parties the complainant and his brother signed the application form issued by the present petitioner. It has also admitted by both the parties that some payments were made by the complaint to the petitioners in respect of such booking through post dated cheques. The only differences appears in the case of the complainant is that, he has paid a huge amount of money to the petitioner by cash towards the booking of said unit. It is the case of the complainant/OP that a diary was given to him by accused No. 6 and 7 indicating the specification of the office space and the payment of cash to the petitioners. The petitioner denied the fact and submitted that the complainant has created a false and cock and bull's story of payment of cash while several post dated cheques were dishonoured. The petitioner tried to serve demand notice upon the opposite parties/complainant but these exercise become futile consequently they serve the intimation to the complainant and his brother through e-mail. After receiving the e-mail the complainant came with the false story of payment of cash and presence of alleged diary.

The complainant case was started u/s 406/409/420/465/467/468/506 read with section 120B IPC for the offences of cheating, criminal breach of trust, forgery and criminal intimidation.

As there were business transaction between the parties so it is very hard to believe that from the inception of the alleged transaction the petitioner possessed criminal intent or mens rea to cheat the complainant. Above all, the present petitioners have their business reputation which was positively ascertained in the complaint. The ingredients of cheating, criminal breach of trust, forgery and criminal intimidation is very much missing in this case as well as in the petition of complaint. It is highly improbable to believe that the complainant had advanced a huge cash payment to the petitioner without having any money receipt. Some post dated cheques were issued by the complainant in favour of the petitioner which were dishonoured by the banker with a remark that the account of the complainant was closed and in some memo it was also mentioned that there are insufficient funds to honour the cheque.

It was mentioned in the petition of complaint that as the demand of the complaint regarding proper money receipt was not fulfilled. He sent a letter dated 08.09.2016 to the petitioner.

The letter was annexed in this revisional application (P-139) and it was not denied by the opposite party herein. On perusing the letter it appears that the letter dated 08.09.2016 is actually a letter in reply to the e-mail of the petitioner. Thus the fact of the complainant regarding previous demand of proper receipt of the cash payment is appears to me utterly false.

The complainant also have no explanation regarding the fact why the account to which the post dated cheques were deposited was closed. The complainant has also no explanation regarding his silence since the year 2015 when the cheques were dishonoured to 08.09.2016. The complainant also did not mention any circumstances or any correspondence with the petitioner since 2015 to 08.09.2016 regarding his demand of alleged money receipt.

The Hon'ble Supreme Court in **State of Hariyana Vs. Ch Bhajanlal & Ors (AIR 1992 Supreme Court 604)** has formulated some parameters wherein a complaint or FIR can be quashed. Paragraph 108 of **Ch. Bhajanlal** is set out as follows:

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the

Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The payment of huge case without any money receipt in respect of booking of office space is an absurd and unnatural proposition. The complainant has not produced any materials from which it can be assessed that any of the alleged offences against the present petitioner has ever been made out in the petition of complaint.

It is true that when the Magistrate has taken cognizance and issued process this High Court shall not use its power for quashing in a natural course of business but the power of quashing of a criminal proceeding has to be exercised very sparingly and with circumspection.

After considering the entire gamut of the instant case and also considering the fact of the petitioner as well as the fact of the complainant, I am of a view that the alleged complaint is based on irrelevant facts which are inherently improbable in the eye of law. There are no sufficient ground for proceeding against the present petitioner in this case.

It appears to me that the dispute between the parties cropped up due to non-payment of the money for the booked unit. The petitioner alleged that the complainant has not

arranged for payment of the post dated cheques; on the other hand opposite party alleged that he has paid huge amount of cash to the petitioner. The dispute cannot actually give rise a criminal proceeding but it may give rise a civil action for breach of agreement or recovery of money.

Initiation of a criminal proceeding is the prerogative of the Learned Magistrate. When the process was issued on the basis of the examination of complainant and its witnesses (on SA), generally it is not desirable that the proceeding should be stalled. At the same time if it appears that the Magistrate has acted on the basis of a misrepresentation of facts by the complainant or if it appears that the facts in the complaint are so improbable to make out a prima facie case against the accused person; in that situation this court must interfere with the criminal proceeding to avoid the abuse of process of court.

In this particular case the fact of the present petitioner stated in the petition of complaint become entirely nullified in considering the fact of the present petition (criminal revision). It appears to me that the complaint/OP has misrepresented the facts before the Learned Magistrate to proceed against the petitioners.

Para 108(5) of **Ch Bhajanlal** has held that:

Where allegation made in the complaint are so absurd and inherently improbable on the basis of

which no prudent person can ever reached a just conclusion that there is sufficient ground for proceeding against the accused.

In considering the parameters of **Ch Bhajanlal** [Para 108(5)] and applying the principle thereon in this alleged particular case, I am of view that if these Criminal proceedings pending before the Learned Magistrate against the present petitioners is allowed to be continued, that would tantamount to be an abuse of process of court. Thus, I find merit to entertain the criminal revision.

In result thereof the CRR is allowed.

The criminal proceeding pending before the Learned Magistrate being no. C.S 21336/17, C.S. 34652/17, C.S. 34649/17 are is hereby quashed.

CRAN applications if pending are also disposed of.

Any order of stay passed by this Court during the continuation of the instant criminal revision are also vacated.

The deposit made by the petitioners before the Learned Magistrate by virtue of the order of this Court be withdrawn by the petitioner.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)

