

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

Present:

Justice Bibhas Ranjan De

C.R.R. 2162 of 2016

Jai Kumar Goyal & Ors.

Vs.

State of West Bengal & Anr.

For the Petitioners

:Mr. Sourav Chatterjee, Adv.

Mr. Suryannel Das, Adv.

Mr. Aditya Mondal, Adv.

Mr. Chiranjit Pal, Adv.

For the State

:Mr. Bidyut Kumar Ray, Adv.

Mr. Pratik Bose, Adv.

For the opposite party No. 2

:Mr. Sudipto Moitra, Adv.

Mr. Vijay Verma, Adv.

Mr. Dwaipayan Biswas

Heard on

:19.07.2023, 07.08.2023,
16.08.2023, 17.08.2023,

28.08.2023, 13.09.2023,
25.09.2023, 26.09.2023

Judgment on : 17th October, 2023

Bibhas Ranjan De, J.

1. The revision application has been filed with a prayer for quashing a First Information Report lodged before Electronics Complex, Police Station Case No. 03 of 2016 dated 06.01.2016 under Section 418/420/406/506/34/120B of the Indian Penal Code.

Facts:-

2. The proceeding arose out of an application under Section 156(3) of the Code of Criminal Procedure (for short CrPC) filed by the opposite party no. 2 alleging, *inter alia*, that petitioners approached the opposite party no. 2/ company to provide security personnel to be deployed at the site office at Kurunti P.O Moutunga, District-Dhenkana, Odisha. To that effect the deal was taken place in the office of the opposite party no. 2 who then provided the security service to the petitioners company as per work order dated 13.09.2011. From then on opposite party no. 2 started providing its service by deploying

security personnel as per work order for the period between 10.10.2011 to 31.05.2013. But, the petitioners did not make the **payment of all sums** in the manner provided in the work order dated 13.09.2011 in spite of repeated reminders. Thereby, petitioners/ accused had entered into a deep rooted criminal conspiracy amongst themselves to cheat the opposite party no. 2/ complainant. The petitioners/accused, thereby, induced opposite party no. 2/complainant to invest a huge sum with false and fake promises. As a last resort, representative of the opposite party no. 2/ complainant company visited the office of the petitioners/accused for a amicable settlement but the accused along with other officials of their company pounced upon the representative of the opposite party no. 2/complainant and abused in filthy languages even with threat of life in case of further visit at their office.

3. The said complaint under Section 156(3) of CrPC was forwarded to Electronic Complex Police Station where the same was registered under FIR no. 03 /16 dated 06.01.2016 under Section 418/420/406/506/34/120B of the Indian Penal Code and the case was put into investigation.

Argument Advanced:-

4. Ld. Advocate, Mr. Sourav Chatterjee, appearing on behalf of the petitioners/ accused advanced his argument on two scores. Firstly, Mr. Chatterjee has submitted that the complaint under Section 156(3) of CrPC was filed without complying the Provision of Section 154(1) & 154(3) of CrPC. In the second place, Mr. Chatterjee has submitted that gamut of the complaint under Section 156(3) of CrPC spells out a case of breach of contract on account of non-payment of agreed amount giving rise to a civil action.

5. In support of his argument Mr. Chatterjee relied on the following cases:-

- ***Anil Mahajan Vs. Bhor Industries Ltd. and another***
reported in **2005 (10) SCC 228**
- ***Hotline Teletubes and Components Limited and others Vs. State of Bihar and another*** reported in **2005 (10) SCC 261**
- ***Uma Shankar Gopalika Vs. State of Bihar and another***
reported in **2005 (10) SCC 336**
- ***Murari Lal Gupta Vs. Gopi Singh*** reported in **2005 (10) SCC 699**

- ***Veer Prakash Sharma Vs. Anil Kumar Agarwal & another*** reported in **2007 (7) SCC 373**
- ***V.Y. Jose and another Vs. State of Gujarat and another*** reported in **2009 (3) SCC 78**
- ***Dalip Kaur and others Vs. Jagnar Singh and another*** reported in **2009 (14) SCC 696**
- ***Medmeme, LLC & others Vs. Ihorse Bpo Solutions Private Limited*** reported in **2018 (13) SCC 374**
- ***M M Carbon Products Private Limited Vs. State of West Bengal*** reported in **2019 SCC Online Cal 2715**
- ***Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors.*** reported in **2015 (6) SCC 287**
- ***Babu Venkatesh & Ors. Vs. State of Karnataka & Ors.*** reported in **2022 (5) SCC 639**
- ***MuKul Roy Vs. State of West Bengal & Ors.*** reported in **2018 SCC Online Cal 4861**
- ***Haji Iqbal alias Bala through S.P.O.A. Vs. State of Uttar Pradesh & Ors.*** reported in **(2023) SCC Online SC 946**

- ***Haji Iqbal alias Bala through S.P.O.A. Vs. State of Uttar Pradesh & Ors.*** reported in ***(2023) SCC Online SC 948***

6. Ld. Advocate, Mr. Sudipto Moitra, appearing on behalf of the opposite party no. 2 has countered the argument advanced on behalf of the petitioners with regard to non-compliance of Section 154(1) & 154(3) of the CrPC by referring to a case of ***HDFC Security Limited and others Vs. State of Maharashtra*** reported in ***2017 (1) AICLR 910 (SC)*** and ***Dharmeshbani Vasudevhai & Ors. Vs. State of Gujarat & Ors*** reported in ***(2009) 6 SCC 567*** and submitted that principle laid down in ***Priyanka Srivastava*** (supra) can be distinguished.
7. Mr. Moitra has further submitted that allegation made in 156(3) CrPC has categorically spelt out a case of dishonest intention of the petitioners to deceive the opposite party no. 2/company by not making payment agreed upon between the parties. Mr. Moitra submitted that non-payment of agreed money cannot be said to be a civil dispute in all the cases when either of the party enters into an agreement with dishonest intention to breach the agreement for wrongful gain.

According to Mr. Moitra the contentions of the application under Section 156(3) of CrPC clearly disclose a cognizable offence required to be registered and investigated.

8. In support of his contention, Mr. Moitra referred to the principle laid down in the following cases:-

- ***State of M.P. Vs. Awadh Kishore Gupta & Ors.*** reported in ***2004 SCC (Cri) 353***
- ***Ravindra Kumar Madhanlal Goenka & Anr. Vs. Rugmini Ram Raghav Spinners Private Limited*** reported in ***(2009) 11 SCC 529***
- ***S.M. Datta Vs. State of Gujrat & Anr.*** reported in ***(2001) 7 SCC 659***
- ***Dharmeshbani Vasudevhai & Ors. Vs. State of Gujrart & Ors.*** reported in ***(2009) 6 SCC 567***
- ***Rajesh Bajaj Vs. State NCT of Delhi & Ors.*** reported in ***(1999) SCC (Cri) 401***
- ***M. Krishnan Vs. Vijay Singh & Anr.*** reported in ***(2001) 8 SCC 645***
- ***HDFC Securities Ltd & Ors. Vs. State of Maharashtra & Anr.*** reported in ***2017 (1) AICLR 910 (SC)***

- ***Ganga Dhar Kalita Vs. The State of Assam & Ors.***
reported in ***(2016) 1 C Cr LR (SC) 209***
- ***State of Andhra Pradesh Vs. Bajjoori Kanthaiah & Anr.***
reported in ***(2009) 1 SCC (Cri) 481***
- ***Skoda Auto Volkswagen India Pvt. Ltd. Vs. State of Uttar Pradesh & Ors.*** reported in ***2021 (1) SCC 2004***
- ***Priti Saraf & Anr. Vs. State of NCT of Delhi & another***
reported in ***AIR 2021 (SC) 1531***
- ***State of Madhya Pradesh Vs. Surendra Kori*** reported in
(2013) 1 SCC (Cri) 247
- ***Reba Kundu Vs. The State of West Bengal & Anr.***
reported in ***CRR 1584 of 2018***

9. Ld. Advocate, Mr. Bidyut Kumar Ray, appearing on behalf of the State has relied on the evidence collected so far in course of investigation.

Decision:-

10. After going through the decisions of ***HDFC Security Limited*** (supra), ***Dharmeshbani Vasudevhai*** (supra) ***Priyanka Srivastava*** (supra) I find that principle laid down in ***Priyanka Srivastava*** (supra) and ***Babu Venkatesh*** (supra) cannot be said to have been distinguished.

11. In ***Priyanka Srivastava*** (supra) it was held that there has to be prior applications under Sections 154(1) & 154(3) of CrPC before filing a petition under Section 156(3) of the CrPC. Both the aspects should be clearly spelled out in the application and necessary documents to that effect should be filed and it is also mandatory on the part of the applicant to get the application supported by an affidavit to that effect. It is done to ensure that the person making the application should be conscious and also endeavour to see that no false affidavit is made.

12. In ***Babu Venkatesh*** (supra) it was further held that prior to the filing of a petition under Section 156(3) of CrPC, there has to be applications under Sections 154(1) & 154(3) of CrPC. The Court further emphasized the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. As the persons could be deterred from casually invoking authority of the Magistrate, under Section 156(3) of CrPC thereby.

13. Now coming back to the case at hand, I find that the application under Section 156(3) of the CrPC was filed without complying any of the Provisions under Section 154(1) & 154 (3)

of CrPC. On the other hand, it is stated in the affidavit itself that no complaint was lodged either before Electronics Complex Police Station or in any other Police Stations. Therefore, the affidavit makes it clear that the complainant submitted application under Section 156(3) of CrPC before the Court of Learned Additional Chief Judicial Magistrate, without complying any of the provisions required in view of the principle laid down in **Priyanka Srivastava** (supra) and **Babu Venkatesh** (supra) on this score registration of FIR on the basis of application under Section 156(3) of CrPC is bad in law.

14. Now, I propose to come to the issue of allegation made in the application under Section 156(3) of CrPC for exercising jurisdiction under Section 482 of the CrPC. On carefully going through the decisions relied on behalf of the parties to this revision application, a settled principle got enunciated that the allegations made in the complaint even if taken on their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused or where allegations made in the complaint and the evidence produced in support of the same do not disclose the

commission of any offence and make out a case against the accused, it is open to the High Court in the exercise of extraordinary inherent power to quash the complaint or FIR.

15. Through catena of decisions Hon'ble Apex Court has held that mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. **Mere breach of contract cannot give rise to criminal prosecution for cheating** unless fraudulent, dishonest intention is shown at the beginning of the transaction.

16. After delving into the facts and circumstances of this case and also keeping an eye to the decisions relied on behalf of the parties to this revision applications, it is primarily a case where the opposite party no. 2 had alleged breach of contract on part of the petitioner in not making entire payments for the services rendered. On the other hand, it is an admitted fact that, considerable amount was paid by the

petitioner to the opposite party/company for the services rendered. It is pertinent to mention here that evidence so far collected during course of investigation also substantiates payment of considerable amount. There was also an allegation by the opposite party no. 2 in the 156(3) complaint that the petitioner company threatened and used criminal intimidation to the representatives of the opposite party no. 2/company which remained uncorroborated by the evidence collected so far during investigation also. As a result, claim of initial deception on part of the petitioners to induce the opposite party no. 2 while entering into the work order agreement also stands nullified.

- 17.** It is further pertinent to mention that tone and tenor of the application under Section 156(3) of the CrPC is that nothing was paid in lieu of security services provided by opposite party no. 2 though evidence collected during investigation makes it clear that considerable amount was paid to the opposite party no. 2/company in course of existing business transaction. Therefore, suppression of fact can be said to have been labelled against opposite party no. 2/complainant.

- 18.** From the aforesaid discussion, it is clear that the dispute between the parties is of a civil nature, proceedings of which should be initiated in the appropriate forum having jurisdiction in order to get proper remedy.
- 19.** As a sequel, the proceedings in connection with Electronics Complex Police Station case no. 03 of 2016 dated 06.01.2016 under Section 418/420/406/506/34/120B of the Indian Penal Code stands quashed.
- 20.** The revision application being no. CRR 2162 of 2016 stands allowed.
- 21.** Case diary be returned.
- 22.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 23.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]