

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

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

**C.R.R. No. - 2028 of 2017
CRAN 1 of 2017 (Old CRAN 5412 of 2017)**

IN THE MATTER OF

**Sk. Saiful@ Sk. Saiful Hossain.
Vs.
State of West Bengal.**

For the petitioner : Mr. Tauhid Khan, Adv.,

**For the State : Mr. Narayan Prasad Agarwal, Adv.,
Mr. Pratick Bose Adv.**

Judgment on : 08.02.2023

Subhendu Samanta, J.

This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure for quashing of a Criminal Proceeding in connection with Electronics Complex P.S Case No. 172 of 2016 dated 17.12.2016 u/s 420/406 of IPC corresponding to GR Case No. 1122 of 2016 pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar and also the charge sheet filed being No. 52 of 2017 dated 30.04.2017 u/s- 420/406 IPC.

The brief fact of the case is that the present OP No. 2 has lodged a written complaint with Learned ACJM, Bidhannagar against the

present petitioner contending inter alia that the present petitioner being the proprietor of M/S R.S. Cable Line became the local cable Operator under the Complainant's Organisation and obtained 114 Nos. of set top boxes along with accessories and T.V. signals, which are the actual properties of Complainant's Organisation. Thereafter it was alleged that the present petitioner swapped under the other M.S.O without giving any intimation keeping Rs. 2,28,000/- due subscription and without returning the set top box along with accessories. Hence, the complainant case was filed u/s 420/406 IPC. The said complaint was forwarded by the Magistrate to the O.C Electronics Complex P.S u/s 156 93) of Cr.P.C. for investigation. During investigation I.O. serve notice upon the present petitioner u/s 41A Cr.P.C.. In response to the notice the petitioner appeared before the I.O. and returned the set top boxes with accessories, which the I.O. seized under proper seizure list. However the police submitted charge sheet against the present petitioner.

Considering the entire facts it appears that the petitioner in compliance to the notice u/s 41A Cr.P.C. the petitioner appeared and handed over all the set top boxes has lodged in the FIR. The FIR was lodged u/s 420/406 IPC.

As the valuable materials which was in the custody of the present petitioner has already handed over so the applicability of Section 406 IPC does not rise.

Admittedly there are business transaction between the petitioners are Private OP No. 2 in consequence thereto they have entered into an agreement for business. It was alleged in the FIR that some amount is outstanding.

To substantiate the offence u/s 420 IPC the definition of cheating enumerated u/s 415 IPC has to be complied with. Dishonest intention is the essential ingredients of the offence which need be present from the inception. In this case the mensrea i.e.

guilty intention on part of the present petitioner cannot be ascertained from the inception of the business transaction between the present petitioner and opposite party. Thus I find no justification to proceed with this Criminal proceeding.

Mere pendency of the Criminal case before the Learned Magistrate is appears to be abuse of process of court.

In result thereof the instant Criminal revision has got merit and it is liable to be allowed. The CRR is allowed. The Criminal Proceeding in connection with Electronics Complex P.S Case No. 172 of 2016 dated 17.12.2016 u/s 420/406 of IPC corresponding to GR Case No. 1122 of 2016 pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar and also the charge sheet filed being No. 52 of 2017 dated 30.04.2017 u/s- 420/406 IPC is hereby quashed.

Pending CRAN applications if any, are disposed of.

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

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.)