**20.04.2023**

**Court No.35**
**Item No. 36**
**(p.a)**

**CRR 2831 of 2016**
**With**
**CRAN 13 of 2020 (Old No: CRAN 1277 of 2020)**

**M/s. Bharat NRE Coke Limited & Anr.**
**Vs.**
**State of West Bengal & Anr.**

Mr. Madhusudan Sur,
Ld. A.P.P
Mr. Dipankar Paramanick.

... For the State

Mr. Sabyasachi Banerjee,
Mr. Ayan Bhattacharya,
Mr. Moti Sagar Tiwari,
Mr. Ravindra Tiwari

... for the Petitioner

Mr. Amitava Pain

...for the Opposite Party No.2

In this order, this Court shall make an effort to answer the question as to whether a company, whose share prices are dropped being subject to market volatility, can be fastened in criminal liability, for an alleged act of cheating, that there was a presumption of the price of the share to surge up.

The criminal justice system was set in motion with filing of the complaint case No. C/74/2015 by the opposite party No.2/complainant, dated 04.05.2015, under Sections 420/406/504/506 IPC, in the Court of Ld. Chief Metropolitan Magistrate, Kolkata. The complainant preferred the same under provisions of Section 156 (3) of the Cr.P.C on the allegations inter alia as follows:-

Before five years from the date of lodging the complaint, the complainant invested Rs.50,000/- in the company namely Gujarat NRE Mineral Resources Ltd., (renamed as the present petitioner) by way of purchasing 2250 equity shares. She has stated that before such investment she was introduced to the co-accused, i.e, one Mr. Vimal Taparia, the Secretary of the said company. Allegedly she was induced fraudulently to pour in the said amount of money in lieu of company's shares on the assurances made of the complainant, to be benefited in future, by rise of the share prices and enlistment of the company's shares in the stock exchange. The sum and substance of the complainant's allegation would be that only due to such assurance of future benefit subject to rise of share prices, she had parted with her money to the accused company. She has further stated that assurances were given of immediate enlistment of company's share in the open market so that the share price becomes more than what was on her date of purchase. She alleges that in spite of assuring her and procuring money from her on those false assurances, the accused company has never enlisted their shares for open market and in turn and with time the price of the shares has dropped to the detriment of financial interest of the complainant. Thus she has alleged of suffering unlawful loss due to alleged commission of cheating by the company upon her, making unlawful gain thereby, for which she has taken shelter under law, by lodging the complaint as above.

Mr. Banerjee, who is representing the petitioner/company, firstly submit that company's functioning and policy regarding enlistment of share would depend on the business profile thereof, which is a continuing affair and depends upon the business condition and market volatility. By referring to the complaint it has been pointed out that in absence of any specific allegation as to how the assurance was extended to the complainant as alleged, the averments to that effect made in the complaint appears to be only vague. He elaborates that the shares of the company has been taken by the complainant from the open market. The complainant has hold those shares for a considerable period of time and also as per complainant's own statement, has enjoyed bonus shares with respect to her such holding. So far as the allegation of fraudulent and dishonest inducement of the complainant by the company for purchasing those shares are concerned, according to Mr. Banerjee there would be no revelation above the same in the complaint with any cogent and sufficient material and hence no case has been made out in the same under Section 420 IPC against the petitioner company. Mr. Banerjee, has requested for quashing of the criminal proceedings against his client.

By referring to the Judgment of ***Vijay Kumar Ghai & Ors. vs. State of West Bengal & Ors.***, reported in ***(2022) 7 SCC 124***, Mr. Banerjee has submitted that even in a case where the parties were bound by a contract (MOU), the Hon'ble Supreme Court was not inclined in favour of exercise of discretionary and extraordinary power by the High Court under Section 482 Cr.P.C, on the ground of absence of culpable intention, at the time of making the promise. He indicates that, in this case, there exists even no privity of contract, between the parties.

Opposite parties are represented including the State. Mr. Amitava Pain appearing for the opposite party No.2 has been very categorical about the fact that his client was fraudulently induced at one point of time regarding imaginary windfall that shares purchased by her would bring her riches. This is the only reason for the complainant to infuse Rs.50,000/- for purchase of petitioner's shares. Though, finally the promise was not kept by the petitioner company to list their company in the exchange and in effect the price of those shares, obtained by his client on the basis of the false promise, had gone down, with time. Thus, according to Mr. Pain, the complainant has suffered injuries and predicaments to her financial interests and had to take shelter in the Court of law with the allegation of criminal charges against the petitioner company. Mr. Pain has prayed for dismissal of petitioner's prayer in this case and has urged that the trial should proceed expeditiously.

Mr. Madhusudan Sur, who is representing the State in this case has submitted the case diary in Court. From the same he has relied on the materials and raised strong objection to the contentions of Mr. Banerjee in support of the petitioner. It is submitted that materials in case diary clearly indicates that though promised, the petitioner company has failed to enlist itself with the stock exchange. As per the materials in case diary, he says, that the complainant, who initially acted on the basis of the promise of the company, was thus defrauded.

Perused the materials available before me and those in the case diary. According to the complaint dated 04.05.2015, the complainant obtained shares of the petitioner company at the inducement of the same, which was not only dishonest but fraudulent and thus allegedly she was deceived from the point of inception of the transaction with the petitioner company. She alleged of having been assured by the company of enlistment thereof in due course of time to result in rise of their share price. That, the complainant alleges, the company has not done and ultimately the share prices went downward resulting into her financial loss against those. She has also alleged that the petitioner company has turned down her prayer for refund of amount of Rs.50,000/-, so invested by her in the company against those shares owned by her.

In this respect the documents, i.e, reply of the petitioner dated 13.10.2014 to the demand letter of the ld. Advocate for the complainant dated 08.09.2014 may be referred to where the petitioner company has categorically explained as regards difficulties in listing the company with the exchange and company's future plan regarding the same. As a matter of fact listing a company with the exchange and open its shares to the market is essentially and solely a policy decision of the Board which is depended on various factors including the fundamental business strategy of a company. Anyone can dream and may also express about the future prospects of his own business to persons at large. Even, for the sake of argument in this case, if it is held that any such enthusiastic and futuristic words were ever expressed to the complainant, regarding the future prospect of the company, that cannot, by any stretch of imagination be held to be an inducement extended to her to act in a particular way, as envisaged in law, to come to a finding regarding existence of ill intention of the company or anybody on its behalf to deceive the complainant. What would constitute to be an act of deception or fraudulent and dishonest inducement has been clearly and categorically made to be understood under Section 415 IPC which may be extracted here for the purpose of discussion:-

> *"415. Cheating.—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."*

The judgment of ***Vijay Kumar Ghai (Supra)*** may beneficially be relied on the note as follows:-

> ***"31.*** ***************
>
> *The essential ingredients of the offence of cheating are:*

*1. Deception of any person*

*2. (a) Fraudulently or dishonestly inducing that person-*

*(i) to deliver any property to any person; or*

*(ii) to consent that any person shall retain any property; or*

*(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were no 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."*

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***35.*** *To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:*

*(i) The representation made by the person was false.*

*(ii) The accused had prior knowledge that the representation he made was false.*

*(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.*

*(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed."*

It is to be noted in this case that none of the ingredients as envisaged by the Hon'ble Apex Court, could be found to have been fulfilled, in the complaint against the petitioner.

So far as the complainant's allegation referring to non-refund the invested amount is concerned, it has to be understood that under the statutory frame of the affairs of a company, any money invested therein against equity shares, has a definite process, to be complied with, before the same can be returned back to the share holders. Again, the same is also a matter of policy decision of the Board, i.e, for 'buy back' of the shares. The submissions made on behalf of the petitioner is accepted, that, every now and then, with any share holder coming up with the prayer for return of money against the purchased shares, the same cannot forthwith be returned by the company, unless there is a 'buy back' scheme of shares in existence. That too has to be through a duly set up machinery like exchange and/or brokers etc.

The complainant's alleged purchasing and holding shares due to the fraudulent inducement of the petitioner and deception, is vague, rather unsubstantiated. The complaint is a nonspeaking one as regards the mode and manner of alleged conduct of the petitioner, to find prima facie from the same any ingredient as to the offence under Section 420,406 of IPC. What the petitioner is disputing is regarding the allegation of fraudulently inducing complainant to purchase the shares and also allegation of not refunding the money to her intentionally and motivatedly. So far as the ingredients of offence of 'cheating' under Section 415 IPC are concerned vis-à-vis the allegations levelled against the petitioner in the complainant as discussed above, this Court is constrained to find that no such ingredient of offence is made out against the petitioner in the said complaint. Rather the complaint of the opposite party No.2 is vague and non-specific so far as the role of the present petitioner in the fraudulent conduct as alleged by the complainant. Under such circumstances the ratio decided in the judgment of ***Vijay Kumar Ghai (Supra)*** shall squarely be applicable in this case and the same would render the present criminal proceeding to be an abuse of the process of Court as well as that of law, if be proceeded with against the present petitioner. The relevant portion may be extracted, as herein below:-

*"**40.** Having gone through the complaint/FIR and even the charge-sheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 405 and 420 IPC, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420 IPC can be said to have been made out. In the instant case, there is no material to indicate that the appellants had any mala fide intention against the respondent which is clearly deductible from the MOU dated 20-08-2009 arrived between the parties.*

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***47.** ************** At the same time, in order to attract the ingredients of Sections 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused(the appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable under Section 420 IPC."*

Thus it is held that, no case is made out against the petitioner, in the complaint. In that event, to proceed against it any further would amount to gross abuse of Court's process, which is to be prevented by this Court, in exercise of power under Section 482 Cr.P.C.

For the reasons as discussed above this revision being C.R.R 2813 of 2016 should succeed. C.R.R 2831 of 2016 is allowed. The criminal proceeding pursuant to C. Case No. 74 of 2015 dated 04.05.2015, under Sections 420/406/504/506 IPC, in the Court of the Ld. Chief

Metropolitan Magistrate at Kolkata is quashed and set aside.

Connected application being CRAN 13 OF 2020 (Old CRAN No: 1277 of 2020) is disposed of.

Case diary be return.

Urgent 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.)**