

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 2947 of 2018****With****CRAN 3 of 2022****+****CRAN 4 of 2022****IN THE MATTER OF****Jugal Kishore Kedia & Anr.****Vs.****Vinod kumar Sharma**

For the petitioner : Mr. Kushagra Shah, Adv.,
Mr. Pinak Mitra, Adv.,
Mr. Aniket Chaushury, Adv.

Judgment on : 16.02.2023

Subhendu Samanta, J.

This is an application u/s 482 of the Code of Criminal Procedure filed for quashing of a Criminal Proceeding in connection with Complaint Case No. CN/791/2017 u/s 420 IPC and corresponding to TR No. 8 of 2018 now pending before the Learned Metropolitan Magistrate, 20th Court Calcutta.

The brief fact of the case is that the opposite party herein filed the complaint case against the present petitioners contending inter alia that the present petitioner approached the O.P. for having some assistance in respect of drafting and registration of a Deed of Gift in respect of flat. There were

discussions between the parties and it was agreed between the petitioners and O.P that petitioner shall pay a Sum of Rs. 25000/- towards the professional fees of the O.P for the purpose of drafting. On the basis of that discussion the OP has prepared a Draft of Deed of Gift and handed over the same to the present petitioners. The OP raise the bill, but it was not paid by the present petitioners and the present petitioner also did not registered the Deed of Gift. OP issued a demand notice to the petitioner claiming for his professional fees of Rs. 25000/-but the petitioners failed and neglected to pay such demand thus the complaint was filed before the Learned Magistrate u/s 420/406/120B IPC.

The OP was examined before the Learned Magistrate on S.A u/s 200 Cr.P.C. Learned Magistrate has taken the cognizance and issued the process against the present petitioner.

Hence this revision.

Learned Advocate for the petitioners submitted before the court that the continuation of the present proceeding is an abuse of process of law. it is the case of the petitioners that the opposite party represented himself to a legal consultant before the petitioners and there were preliminary discussion between them. The petitioner never entrusted the opposite party to prepare any draft of a Deed.

The fact of the petition of complaint is not at all true. The demand notice issued by the O.P specifically stated that it was the demand for non-payment of legal dues. The petitioner filed a supplementary affidavit wherein they have stated the fact that one RTI application was filed before the Bar Counsel of West Bengal to know the whether the opposite party is at all an Advocate or not. The answer of the Bar Counsel is very clear that the O.P is not at all enrolled as an Advocate in the Bar Counsel of West Bengal.

It is the further case of the petitioner that the opposite party himself cheated the petitioners by misrepresenting himself as a Legal Professional.

The petitioner never entrusted OP to prepare any Draft. So the fact of the petition of complaint is totally false. He prayed for quashing.

Heard the Learned Advocate perused the Petition of Complaint also perused the supplementary affidavit and the reply of Bar Counsel regarding the status of the present O.P. It appears from the petition of complaint that the O.P has made the complaint to the Magistrate contending inter alia that the present petitioner approached him for preparation of a Deed of Gift. It was also alleged in the petition of complaint that it was agreed between them that the professional fee would be Rs. 25000/-. It is the specific allegation of the complaint that the OP has prepared a Draft of Deed of Gift after consultation with the Senior Advocates and handed it over to the petitioners. O.P further alleged that he raised the bill of Rs 25000 but it was not paid.

The allegation made in the petition of complaint is mainly based on the offence punishable U/s 420 IPC. Section 420 IPC is the punishment of cheating. The cheating has defined u/s 415 of the code. On through perusal of the petition of complaint it is not clear how the present petitioner has dishonestly induces the opposite party to prepare a Deed of Gift. If the entire fact of the petition of complaint is taken to be true then also the misdeed by the present petitioner made very well come under the definition of breach of agreement. The mens rea is the main ingredient of the offence punishable u/s 420 IPC and which must be present from the very inception of the transaction. The present OP has miserably failed to plead or proof the presence of mens rea from the very inception of the transaction.

Further more the reply of RTI issued by the Bar Counsel of West Bengal makes it clear that present OP is not a legal professional. Thus the OP has not approached before Magistrate with clean hands.

Learned Advocate for the petitioner cited a decision reported in (2000) 4 SCC 168 in support of his contention perused the citation of Hon'ble Apex Court. Paragraph 15 and 16 of the said judgment is as follows-

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise.

16. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

The findings of Hon'ble Apex Court is very much applicable in this case. The principles for quashing a complaint case has specifically laid down in the judgment passed by the Hon'ble Apex Court in the **State of Haryana Vs. Bhajanlal**. Following the principles of **Bhajanlal**, it can be safely held that, the fact stated in the petition of complaint does not disclose any offence punishable u/s- 420 IPC. Further more, the instant Criminal Proceeding cannot be allowed to be continued while the redresses are available in civil jurisdiction.

So, after considering the entire materials on record and after considering the judgment of Hon'ble Apex Court I am of a view that the petition of complaint filed by the opposite party before the Learned

Magistrate does not disclose the commission of offence punishable u/s 420 IPC. The complainant/ opposite party did not approach the Learned Magistrate with clean hands thus the further proceeding of the Criminal Case would amount to the abuse of process of Court.

In result thereof I find merits to entertain the instant Criminal Revision.

The CRR is allowed.

The Criminal Proceeding pending before the Learned Metropolitan Magistrate 20th Court Calcutta being complaint Case No. CN/791/2017 u/s 420 IPC and corresponding to TR No. 08 of 2018 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.)