IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2327 of 2014

Srivardhan Daga
-Vs-
State of West Bengal & Anr.

For the Petitioner	: Mr. Chanchal Kumar Dey Mr. Diganta Sikdar
For the State	: Mr. Avishek Sinha
Heard on	: 11.08.2023, 25.09.2023, 26.09.2023.
Judgment on	: 06.12.2023.

<u>Ananya Bandyopadhyay, J.:-</u>

1. The instant criminal revisional application is filed by the petitioner praying for quashing of proceedings being G.R. Case No. 3513 of 2012 pending before the Learned Chief Metropolitan Magistrate, Calcutta arising out of Hare Street Police Station Case No. 671 of 2012 dated 10.09.2012 under Sections 406/420/120B of the Indian Penal Code and all orders passed therein to the prejudice of the petitioner.
2. The instant criminal revisional application revealed the following facts:
   i. The opposite party no. 2 in gross abuse and/or misuse of the process of criminal law filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 before the Court of Learned Chief

Metropolitan Magistrate, Calcutta inter alia alleging commission of offences punishable under Sections 120B/406/420 of the Indian Penal code against the petitioner herein.

ii. Pursuant to the direction of the Learned Magistrate to treat such application as the First Information Report, the instant case being Hare Street Police Station Case No. 671 of 2012 dated 10.09.2012 under Sections 120B/406/420 of the Indian Penal Code was registered for investigation.

iii. The allegations in the First Information Report were inter alia as follows:

"that the opposite party no. 2 was induced by the accused in the month of March, 2011 to provide a loan to the tune of Rs. 9,90,000 to him for his business expansion; that the accused had agreed to repay the said amount within 6 months with interest @ 8% per annum; that apropos the said agreement, the opposite party no. 2 handed over the said sum of Rs. 9,90,000 to the accused on 03.04.2011 at the office of his Learned Advocate, situated at 12/2 Old Post Office Street, Kolkata – 700001; that under instructions of the said learned advocate, a money receipt was prepared which was duly signed by the accused person; that in spite of the elapse of the period agreed upon, the accused person neither paid the principal amount nor the interest agreed upon; that the opposite party no. 2 made several efforts to contact the accused person but he failed to do so; that the opposite party no. 2 for about a period of 10 months kept on requesting the accused person but he did not respond to such requests; that it was clear that the petitioner had hatched a conspiracy against the opposite party no. 2 and has cheated him; that having no other alternative, the opposite party no. 2 lodged a written complaint with the Hare Street Police Station on 24.08.2012, but the same was of no avail."

iv. Apprehending arrest, the petitioner preferred an application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 before the Learned Chief Judge, City Sessions Court, Calcutta and the same was numbered as Criminal Misc. Case No. 480 of 2012. By order dated 06.10.2012 the Learned Judge granted anticipatory bail to the petitioner.

v. Upon conclusion of a purported investigation, the Investigating Agency submitted a Charge-Sheet being Charge-Sheet No. 420/2012 dated 31.10.2012 under Sections 406/420/120B of the Indian Penal Code against the petitioner.

vi. The said Charge-Sheet was filed before the Learned Chief Metropolitan Magistrate, Calcutta and by order dated 30.01.2013 the Learned Magistrate mechanically and without application of his judicial mind took cognizance of offences punishable under Sections 406/420/120B of the Indian Penal Code against the petitioner.

vii. The allegation that on 03.04.2011 the opposite party no. 2 namely, Sri Ashish Soni handed over a sum of Rs.9,90,000/- in cash to the petitioner at the office of his Learned Advocate and under instructions of the said Learned Advocate, a money receipt was prepared which was duly signed by the petitioner is false, patently absurd and inherently improbable inasmuch as the petitioner went out of Kolkata on 01.04.2011 and returned only on 08.04.2011.

viii. During such period, the travel itinerary of the petitioner indicated he was not present in Kolkata on 3.4.2011 as follows:

a) On 1.4.2011 the petitioner went to Mumbai from Kolkata by an evening flight of Jet Airways at 18:05 hours.

b) On 2.4.2011 the petitioner watched the Cricket World Cup Final Match in Mumbai.

c) On 3.4.2011 the petitioner left for Pune from Mumbai by road in the afternoon; reached Pune at about 5 p.m. and checked-in to Hotel Lotus at Koregaon Park, Pune.

d) On 4.4.2011 the petitioner worked at Pune and left for Aurangabad by car at about 4:30 to 5 p.m.; at about 9 p.m. the petitioner reached Aurangabad and stayed at a Hotel therein.

e) On 5.4.2011, the petitioner worked at Aurangabad and then he flew from Aurangabad to Mumbai by an Air India flight at 17:30 hours.

f) Again on 6.4.2011 the petitioner worked in Mumbai for the whole day and then he travelled on a Jetlite flight from Mumbai to Indore and reached Indore at night.

g) On 7.4.2011 the petitioner worked at Indore throughout the day and stayed overnight.

h) On 8.4.2011 the petitioner flew from Indore to Raipur on a Jet Airways flight in the morning; the petitioner worked throughout the day at Raipur and took a late evening 8 p.m. flight of Kingfisher Airlines from Raipur to Kolkata and as such arrived at Kolkata at 10 p.m.

ix. The purported first information report was lodged after a protracted delay. No explanation, far less plausible explanation was offered to justify such delay and in view of the same, a possibility of false implication and concoction cannot be ruled out. The formal part of the said First Information Report indicated that the occurrence took place sometime in March, 2011.

x. Even if the allegations leveled by the de-facto complainant are believed to be true and are taken to its entirety, the same at its height discloses breach of an agreement and the same cannot be a subject matter of a criminal prosecution.

xi. The de-facto complainant has instituted the instant criminal case in a mala fide manner and has abused the process of criminal law to recover his dues, as alleged or at all, thereby circumventing the Civil Courts.

xii. Petitioner submitted that the disputes by and between the parties, even if are believed to be true and are taken to their entirety, at best relate to disputes which are civil in nature and as such are completely bereft of the essential ingredients of the offence of cheating and criminal breach of trust.

3. Learned Advocate for the petitioner submitted that –

i. The allegation that on 3.4.2011 the opposite party no. 2, namely Sri Ashish Soni handed over a sum of Rs.9,90,000/- in cash to the petitioner at the office of his Learned Advocate and under instructions of the said Learned Advocate, a money receipt was prepared which was duly signed by the petitioner is false, patently absurd and inherently improbable inasmuch as the petitioner went out of Kolkata on 1.4.2011 and returned only on 8.4.2011.

ii. The purported first information report was lodged after a protracted delay. No explanation, far less plausible explanation was offered to justify such delay and in view of the same, a possibility of false implication and concoction cannot be ruled out. Be it mentioned that the formal part of the said First Information Report indicates that the occurrence took place sometime in March, 2011.

iii. Even if the allegations leveled by the de-facto complainant are believed to be true and are taken to their entirety, the same at its height discloses breach of an agreement and the same cannot be a subject matter of a criminal prosecution.

iv. The de-facto complainant has instituted the instant criminal case in a mala fide manner and has abused the process of criminal law to recover his dues, as alleged or at all, thereby circumventing the Civil Courts.

v. The mechanical investigation carried out by the Investigating Agency is inter alia apparent from the fact that the Investigating Agency pressed section 120B of the Indian Penal Code into service in a case where there is a single accused person, notwithstanding such point being raised at the stage of hearing of the anticipatory bail application of the petitioner. The Charge Sheet was submitted only against the petitioner under Sections 406/420/120B of the Indian Penal Code and the Learned Magistrate mechanically took cognizance of offences punishable under Sections 406/420/120B of the Indian Penal Code against the petitioner.

vi. The disputes by and between the parties, even if are believed to be true and are taken to their entirety, at best relate to disputes which are civil in nature and as such are completely bereft of the essential ingredients of the offence of cheating and criminal breach of trust.

vii. A matter which essentially involves disputes of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent.

viii. The purported First Information Report is manifestly attended with an ulterior motive for wreaking vengeance on the petitioner and to create undue pressure on him with an oblique motive and/or for an extraneous purpose and is out and out a harassment proceedings.

ix. Even though vindication of justice and maintenance of law and order in society are the prime objects of the criminal justice but it should not be the means to wreak personal vengeance or to achieve a short cut solution to a civil dispute by putting undue pressure on the opponent by causing intimidation by way of abusing the process of criminal courts.

x. Initiation of a judicial proceedings on taking cognizance of offence on a complaint or commencement of investigation pursuant to a direction under Section 156(3) of the Code of Criminal Procedure, ought to be founded on the principle that whoever moves a Court of Law must be of clean hands. At the initial stage, either under Section 190(1)(a) or Section 156(3) of the Code of Criminal Procedure, knowledge of facts by the Court is limited to the facts disclosed by the party moving the Court. Deliberate suppression and non-disclosure of material facts with a view to mislead the Court to set the machineries of Law into motion is neither permitted at the stage under Section 190(1)(a) nor allowed under Section 156(3) of the Code of Criminal Procedure.

xi. No case under Sections 406/420/120B of the Indian Penal Code has been made out against the petitioner herein and the disputes as alleged or at all by and between the parties cannot be a basis to set the criminal law into motion.

xii. The allegations leveled against the petitioner and the materials furnished in support of the same even if are accepted to be true and are taken to their entirety, do not disclose the essential ingredients of the offences punishable under Sections 406/420/120B of the Indian Penal Code.

xiii. It is evident that the impugned criminal proceedings is manifestly attended with an ulterior motive for wreaking vengeance on the petitioner with an oblique motive and/or for an extraneous purpose and is out and out a harassment proceeding.

xiv. The continuation of the impugned proceedings shall amount to an abuse of the process of the court and it is expedient in the interest of justice that the impugned proceedings and all orders passed therein to the prejudice of the petitioner be quashed and/or set aside in order to prevent the abuse of the process of court or otherwise to secure the ends of justice.

xv. It is an apposite case where this Hon'ble Court may invoke its inherent powers under Section 482 of the Code of Criminal Procedure and quash and/or set aside the impugned proceedings and all orders passed therein to the prejudice of the petitioner.

xvi. The impugned proceeding and all orders passed therein to the prejudice of the petitioner are otherwise bad in law and are liable to be set aside and/or quashed.

4. The Learned Advocate for the State submitted at a nascent stage the fraudulent intentions of the petitioner on the basis of the money receipt endorsing acknowledgement of the loan cannot be discarded and therefore the revisional application shall be dismissed.

5. In ***Deepak Gaba and Ors. Vs. State of Uttar Pradesh and Anr.***[1], the Hon'ble Supreme Court held as follows:

> *"**14.** Section 406 of the IPC prescribes punishment for breach of trust which may extend to three years or with fine or with both, when ingredients of Section 405 of the IPC are satisfied. For Section 406 of the IPC to get attracted, there must be criminal breach of trust in terms of Section 405 of the IPC.*
> ***15.** For Section 405 of the IPC to be attracted, the following have to be established:*
> *(a) the accused was entrusted with property, or entrusted with dominion over property;*

[1] (2023) 3 SCC 423

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

> ***406. Punishment for criminal breach of trust.—****Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*
>
> ***405. Criminal breach of trust.—****Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*
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> *Illustrations:*
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> > *(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.*
> >
> > *(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.*
> >
> > *(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal,*

> *disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, thought Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.*
>
> *(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.*
>
> *(Explanations 1 and 2 and illustrations (a) and (e) to Section 405 of the IPC are excluded, as they are irrelevant.)*

16. *Thus, criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.*

…

18. *In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of cheating under Section 415 of the IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415 of the IPC is "fraudulence", "dishonesty", or "intentional inducement", and the absence of these elements would debase the offence of cheating.*

> ***19.*** *Explaining the contours, this Court in Mohd. Ibrahim v. State of Bihar, observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security."*

6. For the purpose of constituting an offence of cheating punishable under Section 420 of the Indian Penal code, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making a promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.
7. For establishing the offence of cheating, the complainant is required to establish that the accused had fraudulent or dishonest intention at the time of inception to an offer or promise. Failure to keep a promise subsequently presumably does not prove his culpability.
8. The offence of cheating as well as criminal breach of trust cannot occur in respect of the self same transaction. There can either be a fraudulent inducement resulting in parting of property or there can be an entrustment and subsequent misappropriation thereof. Both events cannot occur collaterally in a self same transaction. Such type of situation is absent in the instant case.

9. The money receipt dated 3rd April, 2011 purported signed by the petitioner stated the acknowledgement of receiving a sum of Rs. 9,90,000/- from the complainant at an interest of 18% per annum. The said money receipt did not bear the signature of the complainant nor any witness to that effect. The allegations narrated in the complaint do not comprise the ingredients to constitute the offences under Sections 406/420/120B of the Indian Penal Code as discussed above. The dispute between the parties is primarily civil in nature.

10. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***[2] the Hon'ble Supreme Court observed as follows :

> *"102. 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] 1992 SCC(Cri) 426

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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."

11. In view of the above discussions, the proceedings being G.R. Case No. 3513 of 2012 pending before the Learned Chief Metropolitan Magistrate, Calcutta arising out of Hare Street Police Station Case No. 671 of 2012 dated 10.09.2012 under Sections 406/420/120B of the Indian Penal Code and all orders passed therein are quashed.
12. The criminal revisional application being CRR 2327 of 2014 is allowed.
13. Accordingly, CRR 2327 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.
14. There is no order as to cost.
15. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
16. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)