IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2420 of 2013

With

CRAN 21 of 2023

Nav Ratan Goenka & Anr.
-Vs-
The State of West Bengal & Anr.

For the Petitioners	: Mr. Sabyasachi Banerjee Mr. Pratim Dasgupta
For the State	: Ms. Sujata Das
For the Opposite Party No. 2	: Mr. Suryaneel Das Mr. Chiranjit Pal
Heard on	: 28.06.2023, 12.07.2023, 19.09.2023, 20.09.2023.
Judgment on	: 14.12.2023.

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

1. The instant revisional application has been filed by the petitioners praying for quashing of proceeding in connection with Complaint Case No. AC-1558 of 2012 under Sections 27(2)(a)/50 of the Food Safety and Standards Act, 2006 read with Section 406 of the Indian Penal Code, 1860 pending before the Court of the Learned Judicial Magistrate, 4th Court, Alipore and all

orders passed in connection thereto including order dated 20.06.2012 and 13.02.2013 whereby cognizance was taken and process was issued.

2. The petitioner no. 1 happens to be the Chairman-cum- Managing Director and the petitioner no. 2 happens to be the Managing Director of M/s Diamond Beverages Pvt. Ltd. having its office at P-41, Taratola Road, Kolkata-700088 and also at 6, Alipore Park Road, Kolkata-700027.

3. A complaint being Complaint Case No. AC-1558 of 2012 was preferred by the opposite party no. 2 herein before the Court of the Learned Additional Chief Judicial Magistrate, Alipore therein alleging commission of offences punishable under Sections 27(2)(a)/50 of the Food Safety and Standards Act, 2006 read with Sections 272/273/406 of the Indian Penal Code by the petitioners herein and other accused person. The allegations as levelled in the said complaint, inter alia, are to the effect that –

    a) The opposite party no. 2 is the owner of a grocery shop situated at 11/2, Monoharpukur 2nd Lane, Kolkata-700029 and he is carrying on the said business for the last 40 years. The opposite party no. 2 use to sell soft drinks of various companies through various distributorships.

    b) On 20.12.2012 M/s Shyam Bajrang Trading who happens to be the authorized distributor of Coca Cola Company supplied 2 cases of Limca soft drink to the said shop vide memo no. dated 20.02.2012, batch no. 1051 being manufactured and distributed by M/s Diamond Beverages Pvt. Ltd. on 15.11.2011.

c) At the time of arranging the said stocks for display and sale to the customers, the opposite party no. 2 found that the stocks so supplied to him was manufactured on 15.11.2011 under batch no. 1051 and it had written on it “best before 3 months from the date of manufacture”, which suggest that the entire stock has expired on the date of delivery i.e. 29.02.2012.

d) Thereafter, the opposite party no. 2 informs this abovementioned fact to M/s Shyam Bajrang Trading Co. but they did not pay any heed to that. The opposite party no. 2 also informed the incident of taking expired soft drink from M/s Shyam Bajrang Trading Co. to M/s Diamond Beverages Pvt. Ltd.

e) The opposite party no. 2 informed the said incident to Lake Police Station on 01.03.2012. However, no actions were taken by the police officials.

f) M/s Shyam Bajrang Trading Co. and M/s Diamond Beverages Pvt. Ltd. knowing fully well that the batch no. 1051 of Limca soft drinks has expired, sold the same to the opposite party no. 2 for their wrongful gain.

4. Subsequent to filing of the complaint, the Learned Additional Chief Judicial Magistrate, Alipore took cognizance of the offences vide order dated 20.06.2012 and transferred the case to the Court of the Learned Judicial Magistrate, 4th Court, Alipore for disposal in accordance with law.

5. The Learned Judicial Magistrate, 4th Court, Alipore on 13.02.2013 issued process in the nature of summons under Sections 27(2)(a)/50 of Food Safety and Standards Act, 2006 read with Section 406 of the Indian Penal Code, 1860 after examining the complaint under Section 200 of the Code of Criminal Procedure, 1973.
6. The petitioners stated that on bare perusal of the complaint it would be evident that except some vague and omnibus allegations, no specific allegations are there against the petitioners to substantiate the charges as alleged therein as well as to show the active involvement of the petitioners in commission of the alleged offences.
7. Under the Food Safety and Standards Act it is mandatory before launching a prosecution that an analysis report of examination of the sample food must be obtained in order to determine whether such food has fallen below the standard and thus an offence under the said Act has been made out or not. However, on bare perusal of the complaint, it would be evident that neither any sample of the expired drink as alleged was collected for analysis/examination nor any analysis report was obtained prior to filing of the complaint and hence the impugned proceeding is bad in law as the same has been initiated without following the mandatory requirements as mentioned herein above.
8. Learned Advocate for the petitioners submitted that:-

i. The impugned proceeding bristles with illegalities and infirmities which is bad in law and thus, the same is liable to be quashed forthwith.

ii. The petitioners herein is innocent and in no way involved with the commission of the alleged offence.

iii. The impugned proceedings is an abuse of process of Court which if allowed to be continued for a single day more beyond the stage it has already reached, it will degenerate itself into a weapon of harassment and as such, the same is liable to be quashed forthwith forthwith for the ends of justice.

iv. On bare perusal of the complaint it would be evident that except some vague and omnibus allegations, no specific allegations are there against the petitioners to substantiate the charges as alleged therein as well as to show the active involvement of the petitioners in commission of the alleged offences.

v. The Designated Officer empowered under the Food Safety and Standards Act, 2006 can only launch a prosecution and/or file a complaint for violation of provisions of the said Act and as such the impugned proceeding is bad in law.

vi. The impugned complaint has been preferred without following the mandatory requirements as enunciated in the Food Safety and Standards Act, 2006 and thus the impugned proceeding is liable to be quashed forthwith.

vii. Under the Food Safety and Standards Act it is mandatory before launching a prosecution that an analysis report of examination of the sample food must be obtained in order to determine whether such food has fallen below the standard and thus an offence under the said Act has been made out or not. However, on bare perusal of the complaint it would be evident that neither any sample of the expired drink was collected for analysis/examination nor any analysis report was obtained prior to filing of the complaint and hence the impugned proceeding is bad in law as the same has been initiated without following the mandatory requirements as mentioned hereinabove.

viii. Under Section 27(2)(a) a wholesaler or distributor can only be liable for supplying an article after the date of its expiry. Hence, the petitioners being the manufacturer cannot be held liable and/or prosecuted for contravention of Section 27(2)(a) of the Food Safety and Standards Act.

ix. The petitioners being the manufacturer of the soft drink have delivered the articles to the distributor much prior to the date of expiry. Thus, by no figment of imagination it can be stated that the petitioners were having dominion over such articles or entrusted with such articles or converted such articles for their own use as the petitioners at no point of time were in possession of such articles. Hence, the necessary ingredients as required for making out the offence under Section 406 of the Indian Penal Code are clearly absent in the complaint and as such the impugned proceeding is liable to be quashed forthwith.

x. The Hon'ble Apex Court in its solemn dictum has categorically held that the allegations as levelled in the complaint even if taken to be true at its face value does not make out a case against the accused and are so absurd that any man of ordinary prudence can reach to a just conclusion that no sufficient grounds are there for continuation of proceeding, the proceeding should be quashed forthwith.

xi. It is expedient in the interest of justice to uphold the dignity of law and the impugned proceeding should be quashed forthwith.

9. The impugned proceeding is non-maintainable and liable to be quashed for non-adherence to the following provisions of law of The Food Safety and Standards Act, 2006:

(a) Section 27(2)(a) of the Act, prescribes liability for only wholesaler or distributor for any articles of food supplied after the date of its expiry;
On perusal of petition of complaint, it shall be evident that the petitioner has been described as the manufacturer of M/s Diamond Beverages Pvt. Ltd. Thus, the petitioner being the manufacturer cannot be brought with the dragnet of Section 27(2)(a) of the Act.

(b) Section 50 of the said Act, for which summons was issued against the petitioner prescribes penalty only and no punishment has been set out or mandated. Thus, no criminal prosecution and/or trial can lie or is maintainable since the said provision of law does not prescribe any punishment.

(c) Section 42 of the Act enshrines procedure for launching prosecution which mandates that Food Safety Officer shall be responsible to draw sample of foods or articles, inspect and send the foods or articles for analysis. The food analyst shall prepare an analysis report and send the same to the Designated officer within 14 days whereupon, the designated officer shall act in terms of section 36 of the Act which falls under Chapter VII. However, in this impugned proceeding, no such compliance has been done.

(d) Section 66 of the Act prescribes offences by companies which conceptualize the principle of vicarious liability and is pari materia to section 141 of the N.I. Act. Now, it is a settled position of law as enunciated by Hon'ble Supreme Court of India that non-arraigning the company as an accused where offence is committed by the company and making the directors of the said company only as an accused, shall make the entire proceeding liable to be quashed. Thus, it is imperative to make the company an accused in terms of section 66 of the Act. In this impugned proceeding also, the company namely M/s Diamond Beverages Pvt. Ltd being the manufacturer has not been made an accused and thus, the impugned proceeding is liable to be quashed.

(e) With regard to Section 406 IPC for which summons was also issued, it is stated that the impugned complainant is conspicuously silent with regard to making out the necessary ingredients of the alleged offence. There is no iota of averment which would show "entrustment" or "dominion over the property" in favour of the complainant by the petitioner which are the sine qua non for making out an offence under section 406 IPC.

10. The relevant Sections of the Food Safety and Standards Act, 2006 are mentioned hereinbelow:

i. ***27. Liability of manufacturers, packers, wholesalers, distributors and sellers.—*** *… (2) The wholesaler or distributor shall be liable under this Act for any article of food which is—*

(a) supplied after the date of its expiry; or

ii. ***42. Procedure for launching prosecution.—****(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.*

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,—

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under Section 40.

iii. ***50. Penalty for selling food not of the nature or substance or quality demanded.—****Any person who sells to the purchaser's prejudice any food which is not in compliance with the provisions of this Act or the regulations made thereunder, or of the nature or substance or quality demanded by the purchaser, shall be liable to a penalty not exceeding five lakh rupees:*

Provided that the persons covered under sub-section (2) of Section 31, shall for such non-compliance be liable to a penalty not exceeding twenty-five thousand rupees.

iv. ***66. Offences by companies.—****(1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as

> *responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:*
>
> *Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.*
>
> *(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
>
> *Explanation.—For the purpose of this section,—*
>
> *(a) "company" means any body corporate and includes a firm or other association of individuals; and*
>
> *(b) "director", in relation to a firm, means a partner in the firm.*

11. In the case of ***Aneeta Hada Vs. Godfather Travels and Tours Private Limited***[1], the Hon'ble Supreme Court held as follows:

> "*53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.*
> …

[1] (2012) 5 SCC 661

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove."

12. In the case of ***Indian Oil Corpn. Vs. NEPC India Ltd. and Others***[2], the Hon'ble Supreme Court held as follows:

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

[2] (2006) 6 SCC 736

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking

> *remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

> *"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to*

prevent abuse of the process of any court or otherwise to secure the ends of justice."

13. The Hon'ble Supreme Court in ***Indian Oil Corpn. (Supra)*** further observed as follows:

> "*21. We will next consider whether the allegations in the complaint make out a case of criminal breach of trust under Section 405 which is extracted below:*
>
> > *"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'."*
>
> *22. A careful reading of the section shows that a criminal breach of trust involves the following ingredients: (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; (c) that 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. The following are examples (which include the illustrations under Section 405) where there is "entrustment":*
>
> > *(i) An "executor" of a will, with reference to the estate of the deceased bequeathed to legatees.*
> >
> > *(ii) A "guardian" with reference to a property of a minor or person of unsound mind.*
> >
> > *(iii) A "trustee" holding a property in trust, with reference to the beneficiary.*
> >
> > *(iv) A "warehouse keeper" with reference to the goods stored by a depositor.*
> >
> > *(v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.*
> >
> > *(vi) A servant or agent with reference to the property of the master or principal.*

(vii) A pledgee with reference to the goods pledged by the owner/borrower.

(viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-cum-trust. (Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor.)

23. In Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore Cochin [(1952) 2 SCC 392 : AIR 1953 SC 478 : 1954 Cri LJ 102] this Court held: (AIR p. 484, para 21)

"[T]o constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit."

(emphasis supplied)

24. In Jaswantrai Manilal Akhaney v. State of Bombay [1956 SCR 483: AIR 1956 SC 575 : 1956 Cri LJ 1116] this Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is "entrustment". It, however, clarified: (SCR p. 499)

"But when Section 405 which defines 'criminal breach of trust' speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."

25. The question is whether there is "entrustment" in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both, ownership of the movable property and possession thereof, remain with the debtor.

The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (note: we are not expressing any opinion on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). The following definitions of the term "hypothecation" in P. Ramanatha Aiyar's Advanced Law Lexicon [3rd Edn. (2005), Vol. 2, pp. 2179 and 2180] are relevant:

> *"Hypothecation.—It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership. The borrower enters into an agreement with the lender to hand over the possession of the hypothecated assets whenever called upon to do so. The charge of hypothecation is then converted into that of a pledge and the lender enjoys the rights of a pledgee.*
>
> ***
>
> *'Hypothecation' means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor, without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property. [Borrowed from Section 2(n) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.]"*

But there is no "entrustment of the property" or "entrustment of dominion over the property" by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor."

14. In ***Dalip Kaur v. Jagnar Singh***[3] a two-judge bench of this Court held that a dispute arising out of a breach of contract would not amount to an offence of cheating under section 415 and 420. The relevant extract is as follows:

> *"**9.** The ingredients of Section 420 of the Penal Code are:*
>
> *"(i) Deception of any persons;*
>
> *(ii) Fraudulently or dishonestly inducing any person to deliver any property; or*

[3] (2009) 14 SCC 696

> *(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."*

10. *The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception.* ***If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code.*** *(See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])".*

18. *Applying the above principles, the ingredients of Sections 415 and 420 are not made out in the present case. The grievance of the first respondent arises from the termination of his services at the hospital. The allegations indicate that there was an improper billing in respect of the surgical services which were rendered by the complainant at the hospital. At the most, the allegations allude to a breach of terms of the Consultancy Agreement by the Appellant, which is essentially in the nature of a civil dispute.*

19. *The allegations in the complaint are conspicuous by the absence of any reference to the practice of any deception or dishonest intention on behalf of the Appellant. Likewise, there is no allegation that the complainant was as a consequence induced to deliver any property or to consent that any person shall retain any property or that he was deceived to do or omit to do anything which he would have not done or omitted to do if he was not so deceived. The conspicuous aspect of the complaint which needs to be emphasized is that the ingredients of the offence of cheating are absent in the averments as they stand.*

20. *Section 405 of the IPC deals with criminal breach of trust and reads as follows:*

> *"**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 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 willfully suffers any other person so to do, commits "criminal breach of trust"."*

21. *The offence of criminal breach of trust contains two ingredients: (i) entrusting any person with property, or with any dominion over property; and (ii) the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.*

22. *In Anwar Chand Sab Nanadikar v. State of Karnataka a two-judge bench restated the essential ingredients of the offence of criminal breach of trust in the following words:*

> *"**7.** The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime."*

23. *In Vijay Kumar Ghai v. State of West Bengal another two-judge bench held that entrustment of property is pivotal to constitute an* *offence under section 405 of the IPC. The relevant extract reads as follows:*

> ***28.*** *"Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code."*

24. *None of the ingredients of the offence of criminal breach of trust have been demonstrated on the allegations in the complaint as they stand. The first respondent alleges that the Appellant caused breach of trust by issuing grossly irregular bills, which adversely affected his professional fees. However, an alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment. No element of entrustment has been prima facie established based on the facts and circumstances of the present matter. Therefore, the ingredients of the offence of criminal breach of trust are ex facie not made out on the basis of the complaint as it stands."*

15. In the case of ***Vijay Kumar Ghai and Others Vs. State of West Bengal and Others***[4], the Hon'ble Supreme Court held as follows:

*"**19.** This Court in the widely celebrated judgment of State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] considered in detail the scope of the High Court powers under Section 482CrPC and/or Article 226 of the*

[4] (2022) 7 SCC 124

Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed : (SCC pp. 378-79, para 102)

> *"102. … (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) 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 Act concerned (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 Act concerned, 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."

***20.** This Court in R.P. Kapur v. State of Punjab [R.P. Kapur v. State of Punjab, (1960) 3 SCR 388 : AIR 1960 SC 866] summarised categories of cases where inherent power can and should be exercised to quash the proceedings:*

***20.1.** Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction.*

***20.2.** Where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged.*

***20.3.** Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

***21.** This Court in Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] observed : (SCC p. 11, para 27)*

"27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true

perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

22. *In Indian Oil Corpn. v. NEPC India Ltd. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , a two-Judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under Section 482 of the Criminal Procedure Code, 1973 and formulated guiding principles in the following terms : (SCC p. 748, para 12)*

> *"12. … (i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.*
>
> *For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.*
>
> *(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*
>
> *(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*
>
> *(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where*

the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

*(v) * * *"*

23. *A two-Judge Bench of this Court in State of M.P. v. Awadh Kishore Gupta [State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691 : 2004 SCC (Cri) 353] made the following observation : (SCC p. 700, para 11)*

> *"11. … the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. … In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code."*

24. *This Court in G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in* *issuing the process, particularly when matters are essentially of civil nature.*

25. *This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that : (Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , SCC p. 749, para 13)*

> *"13. … Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."*

16. In the instant case, the complainant has accused the petitioners who happened to be the chairman cum managing director and being such higher officials were not directly involved in dealing with distributorship. The manufactured soft drink to have exceeded the limit of its edibility, in contravention with the provisions under the said Act belong to the domain of the officials to detect and take necessary punitive actions under the Food Safety and Standards Act, 2006. A private complaint cannot be sustained under such circumstances. Moreover the ingredients to constitute an offence under Section 406 of the IPC with regard to criminal breach of trust where there has been no entrustment of property by the complainant to have been dishonestly misappropriated by the petitioners is a figment of imagination devoid of legal sanction. The complaint does not reveal any prima facie case

to be adjudicated through trial. To allow to continue the trial would be abuse of process of law. Moreover the company was also not made a party.

17. In view of the above discussions, the proceeding in connection with Complaint Case No. AC-1558 of 2012 under Sections 27(2)(a)/50 of the Food Safety and Standards Act, 2006 read with Section 406 of the Indian Penal Code, 1860 pending before the Court of the Learned Judicial Magistrate, 4th Court, Alipore and all orders passed in connection thereto including order dated 20.06.2012 and 13.02.2013 whereby cognizance was taken and process was issued is quashed.
18. The criminal revisional application being CRR 2420 of 2013 is allowed.
19. Accordingly, CRR 2420 of 2013 along with CRAN 21 of 2023 stand disposed of.
20. There is no order as to cost.
21. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
22. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)