IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2068 of 2014
Dipankar Ghosh @ D. Ghosh
-Vs-
Hosain Ali Naskar

With

CRAN 13 of 2019 (Old CRAN 164 of 2019)

With

CRAN 17 of 2020 (Old CRAN 1190 of 2020)

With

CRAN 19 of 2022

With

C.R.R. 2338 of 2014
S.R. Goenka & Ors.
Vs.
Hosain Ali Naskar
With
CRAN 2 of 2015 (Old CRAN 2142 of 2015)
With
CRAN 3 of 2016 (Old CRAN 3044 of 2016)
With
CRAN 12 of 2019 (Old CRAN 2063 of 2019)
With
CRAN 16 of 2021
With
CRAN 17 of 2022

For the Petitioners : Mr. Milon Mukherjee
Mr. Rahul Ganguly

For the Opposite Party : Mr. S. Chatterjee

Heard on : 07.06.2023, 01.12.2023.

Judgment on : 06.12.2023.

Ananya Bandyopadhyay, J.:-

1. These two criminal revisional applications are filed by the petitioners praying for quashing of the proceedings of C.R. Case No. 235 of 2014, corresponding to T.R. No. 148 of 2014 under Sections 420/506/406/465/468 of the Indian Penal Code, pending before the Court of the Learned Judicial Magistrate, 5^{th} Court, Serampore and against an order dated 06.06.2014 passed by the Learned Judicial Magistrate, 5^{th} Court, Serampore in C.R. Case No. 235 of 2014, thereby issuing process against the petitioner for commission of offences punishable under Sections 420/506 of the Indian Penal Code.
2. C.R. Case No. 235 of 2014, corresponding to T.R. No. 148 of 2014 had been initiated on the basis of a petition of complaint filed by the opposite party before the Court of the Learned Additional Chief Judicial Magistrate, Serampore, therein alleging commission of offences by the petitioner and others punishable under Sections 420/506/406/465/468 of the Indian Penal Code.

   The allegations leveled in the said petition of complaint are inter alia to the effect that the complainant/opposite party had been the proprietor of a concern named and styled as Naaz Traders Distributors.

   It was alleged that being induced by the representations of the accused persons, the opposite party as also other agents agreed to sell the products of the petitioner's company on commission basis and were appointed as commission agents. The accused persons assured the opposite party that with passage of time, his commission would be increased and as such, the opposite party joined the company of the petitioner an agent.

It was alleged that the accused persons proposed the opposite party to enter into a new contract. However, at the instruction of the accused no. 1 the other accused persons after entering into a conspiracy gave the opposite party some directions and also threatened him that if the opposite party did not work as per their instructions, the opposite party would be removed from his post as an agent and a new agent will be appointed.

It was further alleged that after learning about the aforesaid proposal of the accused persons, when the opposite party asked for his payment for selling their products through written and oral representation, the petitioner and other accused persons conjointly entered into a criminal conspiracy and tried their best to harass the opposite party from continuing with his business smoothly and to face financial crunch. Consequently the opposite party was financially affected to run his family.

It was alleged that when the opposite party reported the aforesaid matter to the accused persons, they threatened to cancel his distributorship and appoint a new distributor.

It was further alleged that the opposite party lodged complaints with the District Magistrate, Hooghly as also to other authorities but in vain. On the contrary, the accused persons cancelled his distributorship, swindled his commission and defrauded him. On protest by the opposite party, the accused persons threatened to kill him and ruined his good reputation in market. The accused persons also threatened the opposite party not to pay off his legal dues.

It was further alleged that in spite of lodging complaints with the District Magistrate, Hooghly and other statutory authorities, no steps were taken and as such, the complainant/opposite party had been constrained to move the Learned Court.

3. On 28.03.2014 the Learned Additional Chief Judicial Magistrate, Serampore was pleased to take cognizance of the offences and was further pleased to transfer the case to the Court of the Learned Judicial Magistrate, 5th Court, Serampore for trial and disposal.
4. On 06.06.2014 the Learned Judicial Magistrate, 5th Court, Serampore was pleased to find out a prima facie case made out against the petitioner under Sections 420/506 of the Indian Penal Code and in such circumstances, issued summons against the him and was further pleased to fix 18.07.2014 for service return and appearance.
5. Being aggrieved by and dissatisfied with the continuance of the impugned proceedings of C.R. Case No. 235 of 2014, corresponding to T.R. No. 148 of 2014, pending before the Court of the Learned Additional Chief Judicial Magistrate, Serampore as also the order dated 06.06.2014 passed therein, the petitioner preferred this application.
6. Learned Advocate for the petitioner submitted that –
    i. The impugned proceeding is a gross abuse of the process of court which if allowed to continue for a single day more beyond the stage

it has already reached, will degenerate itself into a weapon of harassment and persecution.

ii. An offence of cheating within the meaning of Section 420 of the Indian Penal Code necessitates dishonest intention or criminality in the act of the offender right from the inception of the transaction between the accused and the complainant and it must be shown even prima facie that at the very outset that the accused has dishonest intention to cause wrongful gain to himself and wrongful loss to the complainant and with that end in view made misrepresentation of facts to the complainant and thereby induced the complainant to do or omit to do anything that the complainant would not have done or omitted to have done but for the inducement; the allegations made in petition of complaint of the instant case far from showing any such criminality in the act of the petitioner or dishonest intention in the act of the petitioner, does not even show that at the very outset the petitioner transacted with the complainant, namely the opposite party by making any false representation of facts. In such circumstances continuance of the impugned proceedings will be a gross abuse of the process of court.

iii. The basic ingredients of criminal intimidation are – (a) A person threatens another with injury, (b) The injury is to – (i) his person, reputation or property; or (ii) to the person or reputation of any one in whom that person is interested; (c) The intention is – (i) to cause harm to that person, or (ii) to cause that person to do ay act which he is not legally bound to do, as means of avoiding, execution of such threats, or (iii) to cause that person to omit to do any Court which that person is legally entitled to do, as the means of avoiding execution of such threat. In the instant case, the opposite party had merely mentioned about the factum of him being threatened by the present petitioner and other accused persons without giving any plausible explanation. In such circumstances, cognizance taken by the Learned Magistrate based on such inadequate averments to that effect and thereby issuing process against the petitioner had caused grave miscarriage of justice which called for the interference of this Hon'ble Court.

iv. Although the opposite party had entered into an agreement with the company wherein the petitioner and other accused persons were officials, but surprisingly he had not made the company i.e. Bengal Beverage Co. Pvt. Ltd. an accused. He had only mentioned the officials of the said company. However, there is no iota of evidence in order to substantiate that the said accused persons have personally been benefitted out of the instant alleged malafide transaction, thereby causing wrongful loss to the opposite party and hence causing wrongful gain to themselves. In such circumstances, it is abruptly clear that the instant case has been meted out in order to fulfil private and personal grudge. In such premise, the proceeding impugned is liable to be quashed forthwith for the ends of justice.

v. Summoning of an accused is a serious matter in criminal jurisprudence as the court has to be extremely careful as it is a question of liberty of an individual, so is the interest of society in maintaining law and order. As the personal liberty is paramount, such powers should be and must be exercised judiciously with extreme care and caution. In such circumstances, the process issued against the petitioner is bad in law and the proceeding impugned is thus liable to be quashed by this Hon'ble Court.

vi. It has been well settled through judicial interpretations both by this Hon'ble Court as also the Hon'ble Supreme Court that invocation of jurisdiction of a criminal court in case of a dispute which is purely civil in nature is per se not maintainable; the impugned proceeding is liable to be struck down on this score alone.

vii. The allegations made in the petition of complaint are so absurd and inherently improbably on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioner. Hence on the basis of such petition of complaint in question continuation of instant proceedings will be a gross abuse of process of Court and as such the same is liable to be quashed for the ends of justice.

7. Examination of complainant on solemn affirmation under Section 200 Cr.P.C. on 06.06.2014 stated as follows:

"I am the complainant of this case and I have filed this case against S.R. Goyenka who is the Director of Bengal Beverage Company Private Limited S.S. Chaterjee, D. Ghosh, Supriay Nag, Nirmalendu Bhui.

I am a distributor of Bengal Beverage Company Private Limited.

And I am bound by agreement to supply the products of this Bengal Beverage Company Private Limited.

I have an agreement which I have entered with Bengal Beverage Company Private Limited for the said distributorship.

I carrying on the business of distributorship in the name and style 'Naj Traders'.

I am transacting with the Bengal Beverage Company Private Limited since October,2008.

When I started to transact with Bengal Beverage Company Private Limited I was promised by the organization that they will provide me a commission of 5% of my total early sales and they also promised that this percentage was increased year by year.

I had got such promises from all the accused persons.

From November,2013 the said company stopped delivering me the product for distributing and I owe certain amount of money from the said company.

I had informed District Magistrate of Hooghly of Hooghly and also the officials of the concerned company i.e. the accused persons about the fact that the company had stopped delivering me the products.

I have also informed the matter to the S.P. Hooghly and also the Hon'ble C.M. of West Bengal.

I am unemployed at present due to the stoppage of delivering of products.

I am mentally depresses due to the alleged act of the company.

I have certain dues from the market also.

I have not received the products from the company in spite of payment made to the company.

The company has not returned the money also amounting to Rs. 30,000/-

Accused no 4 & 5 also threatened me with dire consequences if I tried to continue the business with the company.

The other accused persons also threatened me with dire consequence over the telephone if I tried to continue the business relationship with the company.

The company refused to continue the business relationship with the company.

The accused persons engaged one Samim Mondal physically beat my son.

The accused person wanted to execute new agreement with me as per their wish.

I pray for justice."

8. Section 420 of the Indian Penal Code states as follows:

> *"**420. Cheating and dishonestly inducing delivery of property.—**Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

9. Section 506 of the Indian Penal Code states as follows:

> *"**506. Punishment for criminal intimidation.-** Whoever commits the offence of criminal intimidation shall be punished with*

imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

10. Section 406 of the Indian Penal Code states as follows:

> *"**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."*

11. Section 465 of the Indian Penal Code states as follows:

> *"**465. Punishment for forgery.—**Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

12. Section 468 of the Indian Penal Code states as follows:

> *"**468. Forgery for purpose of cheating.—**Whoever commits forgery, intending that the 1[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

13. In **State of Haryana and Others vs. Bhajan Lal and Others**[1], the Hon'ble Supreme Court held as follows:

[1] 1992 SCC (Cri) 426

"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) 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."

14. The contentions of the opposite party/complainant narrated in the complaint as well as his statements during examination on solemn aforementioned under Section 200 Cr.P.C. on 06.06.2014 reveal the dispute between parties to be based on an agreement concerning distributorship of certain beverage. The complainant/opposite party had been transacting with the company since October, 2008 wherein the present petitioners are employees. Such business relationship between the parties through an agreement with the company does not entail dishonest inducement to deliver any property to any person etc., to comprise the offence of cheating and dishonest inducement through delivery of property. In the instant case, the complainant opposite party was to obtain the beverages from the company and sell the same in open market. It will be figmentary and futile to accord the ingredient of cheating or dishonest inducement to the petitioners without any scope of such an act to have been discharged in their official capacity.

Moreover the company being Bengal Beverage Co. Pvt. Ltd. was not made a party. Not a single sentence has been narrated against the petitioners by the complainant/opposite party to implicate the petitioners with the act of criminal breach of trust or forgery for the purpose of cheating. There cannot be any causal connection between the petitioners acting in the capacity of the Director of the aforesaid company and/or Vice-President or other staff to be in direct contact with a distributor instigating him to act in a certain manner prejudicial to him. The instant complaint has been filed in order to set in motion criminal law to sub-serve personal vengeance and malicious intent.

15. Under the facts and circumstances of the case to allow to continue with the trial before the Learned Trial Court will result in the process of abuse of law.
16. In view of the above discussions, the proceedings of C.R. Case No. 235 of 2014, corresponding to T.R. No. 148 of 2014 under Sections 420/506/406/465/468 of the Indian Penal Code, pending before the Court of the Learned Judicial Magistrate, 5th Court, Serampore and against an order dated 06.06.2014 passed by the Learned Judicial Magistrate, 5th Court, Serampore in C.R. Case No. 235 of 2014, thereby issuing process against the petitioner for commission of offences punishable under Sections 420/506 of the Indian Penal Code are quashed against the present petitioners, in CRR 2068 of 2014 and CRR 2338 of 2014.
17. The criminal revisional applications being CRR 2068 of 2014 and CRR 2338 of 2014 are allowed.

18. Accordingly, CRR 2068 of 2014 and CRR 2338 of 2014 stand disposed of. Connected application, if there be any, also stands disposed of.
19. There is no order as to cost.
20. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
21. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)