

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R No. 3481 of 2016

Shree Coke Manufacturing Company Pvt. Ltd. & Anr.

Vs.

State of West Bengal & Anr.

For the Petitioners

: Mr. Ayan Bhattacharjee,
: Mr. Pawan Kumar Gupta,
: Mr. Avinash Kankania,
: Ms. Sofia Nesar,
: Mr. Santanu Sett.

For the OP No.2

: Mr. Amarth Ghose,
: Mr. Prasun Ghosh,
: Mr. Soumyadeep Ghosh.

For the State

: Mr. Saswata Gopal Mukherjee
Ld. P.P,
: Mr. Anand Keshari.

Hearing concluded on: 16/02/2023

Judgment on: 11/05/2023

Rai Chattopadhyay, J.

- 1.** In this case the petitioners, i.e, a juridical person/company namely, Shree Coke Manufacturing Company Pvt. Ltd. and its officer, have prayed for quashing of the criminal proceeding against them, which was initiated pursuant to the complaint, being Hare Street Police Station Case No.420 dated 09.07.2015 under Sections 120B/420/406 IPC. The connected G.R case is G.R. No. 1597/15, now pending in the Court of Ld. Chief Metropolitan Magistrate at Calcutta. Opposite party No.2, i.e, another juridical person namely, M/s. Prasad Seeds Pvt. Ltd. and its officer are the complainant.
- 2.** The dispute arose and the offences of cheating and criminal breach of trust, have been levelled, with respect to alleged deception and fraud committed through an 'agreement for sale', entered into between the petitioner and the opposite party No.2 companies, on 16.04.2015. Sale was relating to 244 decimals of agricultural land comprised in Dag No.358 (part), 359 (part), 360 (part), 362 and 363, Mouza - Palroah, J.L.No: 10, L.R Khatian No. 496, 495, situated within jurisdiction of Uluberia Police Station in Howrah. By executing the said agreement for sale the petitioner/company sold the concerned landed property as mentioned above to the opposite party No.2/company for valuable considerations.
- 3.** Unfortunately within a period of two months and odd, the complainant company/opposite party No.2 filed the complaint in the Court of Chief Metropolitan Magistrate at Calcutta which was registered as C. Case No. 116/2015. The allegations made therein may be summarised, as herein below:-

The complainant/opposite party No.2 has disclosed that in and around February 2015, it had decided to purchase landed property in West Bengal for industrial/commercial purpose. In doing so allegedly it had been induced, dishonestly and fraudulently by the petitioner/company to purchase the landed property as described above. The disclosure by the petitioner/company as regards the land being free from all encumbrances, has been narrated to be pursuant to their culpable intention to cheat the de facto complainant/opposite party No.2/company. Allegedly the de facto complainant company/opposite party No.2 was persuaded by insistence and deception to part with the consideration money, pending necessary investigation as to the title of the property. The earnest money of an amount of Rs.81,50,000/- exchanged hands, vide three cheques dated 04.03.2015 and 16.04.2015 (two cheques) respectively. It is stated all the said cheques were duly encashed by the petitioner company.

It is a specific allegation of the complainant/company that at the time of execution of agreement the petitioner/company had supplied only incomplete documents and suppressed the necessary facts like charges against the concerned property etc. Allegedly it is only after realisation of the earnest money as above, the petitioner/company had disclosed about the property being mortgaged. This, the complainant has stated to be in deviation of their assertion, declaration and stand in the agreement for sale dated 16.04.2015. Thus, false representation, fraud, cheating and mis-appropriation by way a criminal conspiracy was alleged against the petitioner/company. The complainant has further stated about the many more irregularities with respect to the title of the property, which they say to have discovered during searching. Those are like discrepancy of the name of the owner in the record of rights and also possession of the portion of the property by Bargadar etc, which the

complainant has stated are in contravention of the declarations by the vendor/petitioner in the said deed dated 16.04.2015. The complainant has further stated that the petitioner/company, even after being approached, has not taken any step for redress of complainant's grievance as above. Hence, finding no other way the criminal proceeding was initiated against the petitioner under Sections 120B/420/406 IPC.

4. To the said complaint against the present petitioner, police registered specific police case as mentioned above and started investigation, pursuant to the direction of the Court under Section 156 (3) Cr.P.C, 1973.

5. The petitioners challenge the said proceeding.

6. Mr. Bhattacharya, appearing for the petitioner has taken this Court through the agreement for sale dated 16.04.2015 to submit that after duly and consciously entering into the agreement the complainant could have not viably maintained any proceeding as the present one and to this fact the trial Court has not applied its mind at all. Mr. Bhattacharya has pointed out to the relevant clause in the agreement like –

“(j) The Vendor shall furnish all documents relating to Bank loan for which the subject property is mortgaged.

(6) The Purchaser shall purchase the said scheduled land property within 45 days (Forty Five days) hereof subject to the same being free from all encumbrances and has clear title and marketability.

(7) In case any defect in title or encumbrances is found then and in such event the Vendor shall at its own cost rectify and/or have the said encumbrances/defects removed and the Vendor shall by removing all defects in title of the said schedule land property make the same marketable.”

By referring to this Mr. Bhattacharya has submitted that the allegation, of deception or fraud being exercised upon the petitioner,

is only elusory in so far as while executing the sale deed the petitioner being vendor of the deed and owner of the concerned property, had duly and dutifully disclosed the facts and as to how the concern property is encumbered. According to him, this was the ultimate duty of the vendor which should obviously brush aside any allegation of wilful concealment or culpable intention of cheating against his client. It is submitted that on the contrary it is the ill-will of the complainant/company that after entering into agreement which declared regarding status of the concern property in the manner as above, frivolous type of allegations have been levelled against the petitioner. He says that virtually the complaint would not disclose any offence of his client as alleged and thus proceeding in the Court of law against his client would only be an abuse of its process. Therefore, he has urged for invoking this Court's power under Section 482 Cr.P.C to quash the entire criminal proceeding against the petitioner/company.

7. Vehement objection has been raised as to the said submissions and prayer of the petitioner, by the opposite party No.2/company. It is the complainant in the case and Mr. Ghosh representing the same has emphatically submitted that at this stage, when the Court would only look for existence of prima facie materials as regards the alleged offence, to be available in the complaint/documents, complainant's case is very well established to that extent.
8. He has also gone into the same agreement for sale deed dated 16.04.2015. He has pointed out the following portion:-

"The Vendor has assured and confirmed as follows:-

i) The Vendor are the sole and absolute owner of the said schedule land property and the same is free from all encumbrances, charges, liens, trusts, lispendes and attachments and the said land is in Khas possession of the Vendor and all rates and taxes have been paid by the Vendor upto date.

ii) The Vendor should ensure that there are no suits and/or proceedings pending in respect of the said schedule land property or any part thereof till date."

9. According to him, it is only a culpable intention of the petitioner/company to defraud the complainant/company, for which the petitioner has laid down certain false and untrue facts/statements in the said agreement for sale. This prima facie shows that from the very inception of the transaction, the petitioner being the vendor had ill-will and culpable motive to deceive and cheat the complainant/company. Thus, he says, that this case should go into trial so that the prosecution can bring on record evidence and prove the allegations against the present petitioner. He disagrees that there is any scope for this Court to interfere into the proceedings and has prayed for dismissal of the present case.

10. The principle allegation against the petitioner is of cheating, under Section 420 IPC. The ingredient thereof would be found from the narration in Section 415 IPC. Let the same be extracted herein below:-

"Section 415 - Cheating.

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."

11. Needless to say that deception of any person and he intentionally being fraudulently and dishonestly induced to do an act,

like delivery of any property or giving permission to retain any property, which but for the fraudulent inducement, he would not have done - would be the constituent factors for an offence under Section 420 IPC. Two essential requirements would be, firstly, deceit, that is to say, dishonest or fraudulent misrepresentation and secondly, inducing the person deceived to part with the property, excepting the necessary existence of the ill intention/mens rea of the perpetrator. To assess whether prima facie materials as to the said offence could be brought on record by the complainant/company, one has to see through the complaint as well as the agreement for sale dated 16.04.2015.

12. No doubt declaration of the vendor/petitioner in the said agreement that the property is free from all encumbrances, charges, liens, trust, lispendens and attachments and the said khas possession of the vendor, do not appear to be a proper declaration by the vendor, in view of the discloser which followed later on, in the same document. As stated earlier, later on in the same indenture, the complainant had disclosed regarding the property being mortgaged and also other irregularities therein. The declaration of the vendor regarding no pendency of any suit or proceeding with respect to the scheduled property is also found to be not commensurate with the actual state of affairs, on the face of it.

13. Surprisingly enough the vendor/petitioner/company in the same deed has also declared for furnishing bank loan documents against the mortgaged subject property, and undertook to make the property marketable. This is a double standard exercised by the petitioner/company who is declaring on affidavit and in lieu of valuable consideration as well as earnest money paid to him. A fraudulent or dishonest intention is shown from the beginning of the transaction. These, in my humble opinion, would be sufficient to indicate at this

stage, prima facie, the mens rea and that the ingredients of fraudulent or dishonest inducement to make the complainant to part with his money, are present, in the transaction between the parties, from the very inception, i.e, the date of entering into the said agreement. Hence, the ingredient of the offence as alleged against him do thus appear to be sufficiently brought on record by the complainant. There should be no hesitation of this Court to find that strong prima facie materials against the petitioner/company are depicted in the complaint which should make the accused persons/petitioners, to stand for trial, having the allegations made in the complaint prima facie constituted cognizable offence against the petitioner/company and its representative and made out a triable case.

14. Without going into the debatable questions as to who may be at fault or who has committed the crime and in what manner, which, as a matter of fact, this Court does not have any power to go into at this stage, the available materials are found to be prima facie indicative of the existence of necessary ingredients of offence, as discussed above. Therefore according to the settled principles of law, quashing of the proceedings would not be warranted in this case.

15. So far as the offence under Section 406 IPC is concerned pursuant to the discussion as above the materials to prima facie form an offence under the said section against the present petitioner are on record so is that, as regards Section 120B IPC.

16. The law is well settled that the inherent power of this Court under section 482 of the CrPC must be exercised very sparingly and with circumspection and that too in the rarest of rare cases. Petitioner's case could not qualify the said test, to secure exercise of the extraordinary jurisdiction or the inherent power of the Court, as above.

17. In deciding as afore stated, this Court is guided by the principles enunciated by the Hon'ble Supreme Court in the case of *Neeharika Infrasture Pvt. Ltd vs State of Maharashtra*, reported in 2021 SCC Online SC 315, in the following words :

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr. P.C.*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go*

into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

18. Accordingly it is found that there is no scope for interference of this Court into the proceedings initiated pursuant to complaint (C. Case No. 116/15, dated 26.06.2015). No ground has been established in this case by the petitioner that the proceeding may jeopardise the process of the Court by abusing the same being unnecessary and not maintainable. Therefore the present revision fails.

19. Criminal revision being CRR 3481 of 2016 is dismissed. The trial Court is however requested to expedite the trial of the present case in view of the age of the same.

20. CRR 3481 of 2016 is disposed of, connected application, if any, is also disposed of. Case diary be returned immediately.

21. Interim order, if any, stands vacated.

- 22.** Urgent certified copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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(Rai Chattopadhyay, J.)