

Judgment on: 26/06/2023

Rai Chattopadhyay, J.

1. Both the revisions being CRR 4039 of 2015 and CRR 4040 of 2015 were heard together and are being disposed of by dint of a common judgment, as herein below.
2. Both the matters have been filed by the juridical persons/company namely Magma Fincorp Limited.
3. The said company/petitioner has challenged two criminal proceedings arising out of two separate complaints, filed by two different complainants.
4. In CRR 4039 of 2015, the petitioner has challenged proceedings in Case NO. C.S. – 0024674 of 2015 (T.R. No. 6757 of 2015), under sections 420/406/120B of the Indian Penal Code, pending before the Metropolitan Magistrate, 18th Court, Calcutta. In CRR 4040 of 2015 the petitioner has challenged the proceedings in Case No. C.S. -0027619 of 2015 (T.R. No. 7037 of 2015), under Sections 420/406/120B of the Indian Penal Code, pending before the same Court.
5. One Sri Debasish RoyChowdhury is the complainant in C.S. No. 0024674 of 2015 (related to CRR 4039 of 2015) and Sri Saikat Sen is the complainant in C.S. No. 0027619 of 2015 (related to CRR 4040 of 2015). Both the complainants have alleged against the present petitioner/accused person and the crux thereof may be laid down as herein below:-
6. The petitioner has been mentioned to be the employer company in which the complainants respectively have served for a considerable period and with excellent service record. Petitioner Company is the employer of both the complainants.

OP no.2/complainant in CRR 4039 of 2015 was appointed as Senior Manager of the company with effect from 25.11.2005. He was subsequently appointed the Regional Business Head, West Odisha, with effect from 01.12.2005. Later on, vide letter dated 09.06.2007, he was promoted as General Manager of the company. OP No.2 in CRR 4040 of 2015 was appointed as Associate Vice President in the same company on and from 20.03.2008.

- 7.** The dissension started since the year 2010. The opposite parties in both the cases/complainants, have stated in their respective written complaints that they had acquired and built up, by 2010, enough efficiency and expertise, to venture for more lucrative, highly paid employment elsewhere, than the accused company. They say that they would have accepted offer of better jobs, leaving their employment with the accused no.1 company, had not they been cheated with the false promise to be granted with better perquisites in future, by the accused no.1 company, of which the petitioner is the office bearers responsible for company's policies and affairs. They say that the company circulated an e-mail offering the following perquisites:-

It was declared in 2010, that all employees of the accused no.1 company including the complainant, who hold the post of Manager and above and who either –

- a.** Have completed two years of service with the company as on 1st April, 2010 (i.e, has joined the services of the company before 31st March, 2008) or,*
- b.** Joined the company after 31st March, 2008, would require to complete two years of service and after being so eligible such employee has to serve the company for a period of three years, such employee/s would be entitled to an one-time payment under the head/nomenclature of 'Long Term Bonus' as per slabs laid down by the company (for the sake of brevity, hereinafter refer to as 'LTB').*

- 8.** They say that due to the offers of the company in the form of benefit for excellence, as circulated through the e-mail, as described above, they were restrained to seek for better opportunities anywhere outside the said company and such promise, which eventually turned to be a false one, compelled them to place faith and reliance in the said declared scheme and policy of the company to be granted to them, as they fulfil the eligibility criteria as prescribed therein.
- 9.** OP no.2 in CRR 4039 of 2015 have mentioned in the complaint that as per the said scheme declared by the company he was entitled to a monetary benefit from the company to the tune of Rs. 12,00,000/-, whereas OP no.2 in CRR 4040 of 2015 has stated to be entitled to receive such a financial benefit from the said company to the tune of Rs.17,00,000/-.
- 10.** Allegedly the accused no.1 company had never intended to comply with the terms of the scheme and the same was merely a camouflage and eye wash, to hold back the efficient employees like the complainants in the company, in lieu of lesser financial benefits. On the contrary the complainants were induced to believe in the scheme reasonably, as competent and qualified employees, having complied with the eligibility criteria mentioned therein. They say that they believed company's decision in good faith but eventually suffered wrongful loss, due to the deceptive and fraudulent withholding of financial benefits, declared earlier. They also allege that they have been fraudulently induced to yield their labour and expertise, on the basis of the false promise and some fraudulent scheme declared by the accused company.
- 11.** The events took a different turn when the complainants resigned from their job with the accused no.1 company. OP no.2 in CRR 3188 of 2015

resigned from the company's job with effect from May, 2013 and OP no.2 in CRR 3189 of 2015 had resigned with effect from February, 2014.

- 12.** The complainants say that their demand for financial benefits in terms of the scheme declared by the company as mentioned above was not paid any heed to and thus they have been subjected by the said company with deception and cheating. Ultimately they took resort in a Court of law by filing the complaint as aforesaid.
- 13.** While placing the case of the petitioner Id. Sr. Counsel Mr. Mukherjee has stressed specifically on the point that any offer as alleged, if have been made at all, was contingent in nature, in so far as the benefit was to be awarded only after meeting certain qualifying criteria both in terms of experience of the incumbent and also in terms of the profit and/or good business of the company. He says that it is only the misconception of the complainant that they were eligible for any "Long Term Bonus" (LTB) in terms of the company's circular, which the complainants have mentioned in their respective complaints.
- 14.** Mr. Mukherjee has strongly emphasised that there is no element of an offences under Section 420/406/120B of the Indian Penal Code in the entire conduct and operation of the petitioner, being the directors of the accused no. 1 company. Mr. Mukherjee emphasises that any proceeding against his clients would only result into gross abuse of the Court's process and this Court, in exercise of its inherent jurisdiction under Section 482 of the Cr.P.C may interfere with the same by quashing the entire criminal proceeding against his clients.
- 15.** State is represented though no one has represented the OP no.2.
- 16.** Be that as it may, it is the submission on behalf of the State/OP that since the matter would involve certain disputed questions of fact, which

cannot be gone into by this Court, in exercise of its power under section 482 of the CrPC, the expeditious trial is warranted in these cases.

- 17.** The petitioner, in these cases, have not, however, challenged or denied issuance of a circular, as mentioned above declaring certain financial benefit to its employees, who would qualify certain criteria. It is also an admitted fact in these cases, that at the relevant point of time of issuance of such circular and even thereafter, the opposite parties have been in employment with the accused no.1 company. Non-payment of any financial advances to the complainants, is also a fact which is virtually admitted in these cases. The other questions, that is, whether the complainants have complied with the requisite criteria or not and also that whether the benefit declared was contingent to certain condition or not are definitely the questions of fact to which this revision Court would not be eligible to go into. That is only the prerogative of the trial Court which is the fact finding Court, to consider the evidence of the parties and thereafter determine on due scrutiny of the same, in accordance with the law prescribed – as regards necessary of the questions of facts, related with these cases.
- 18.** So far as the submission on behalf of the petitioner that there is no element of cheating involved in the conduct of the company by issuing the circular as above, we need to consider the elements of the offence as enshrined in the statute.
- 19.** Offences under sections 420, 406 and 120B of the Indian Penal Code are contemplated. Section 420 thereof provides for punishment for an offender who cheats and thereby dishonestly induces to deceive a person to deliver any property. What would constitute *cheating* has been enumerated in section 415 of the IPC. Deception of a person and fraudulently and dishonestly inducing him to do anything which he

would not do if he were not so deceived, would make a person guilty of an offence under this section of law. While interpreting these provisions the Courts of the country have time and again pronounced and settled that failure to keep up the promise would not come within the purview of these provisions. Fraudulent and dishonest intentions to deceive should be evident from the very inception of the inter se transaction between the parties. For the sake of clarity of the discussion, one may refer to a judgment of the Hon'ble Supreme Court reported in (2005) 10 SCC 228 [*Anil Mahajan vs Bhore Industries Limited and Another*], where the Court has held that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Obviously in this case, as discussed earlier, and to the disadvantage of the petitioner, the written complaint is not that cryptic. Petitioner has challenged the criminal proceeding against him on the basis of the said complaint. As per the settled law, however, this Court while exercising jurisdiction under section 482 CRPC would act with caution and circumspection enough, not to obviate a situation when inspite of the complaint having enumerated the ingredients of the alleged offence with prima facie allegations and materials, the trial may be vitiated. One may refer to the Apex Court's decision reported in (2019) 9 SCC 677 [*Lakshman vs State of Karnataka*], where the Court has been pleased to find as follows :

“ 8. *****

In a petition under Section 482 CrPC it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes.

It is fairly well settled that power under Section 482 CrPC is to be exercised sparingly when the case is not made out for the offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any schedules were appended to the agreement or not, a finding is required to be recorded after full-fledged trial. Further, as the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the NI Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482 CrPC, we are of the view that the High Court also committed an error that there is a novation of the contract in view of the subsequent agreement entered into on 8-11-2012. Whether there is novation of contract or not and the effect of such entering into the contract is a matter which is required to be considered only after trial but not at the stage of considering the application under Section 482 CrPC.”

As stated earlier, the claim of the petitioner regarding that application of the circular to be based on certain contingencies, which according to them were not fulfilled to justify complainant's claim to the benefit there under – would be a question, purely of facts. Otherwise the complaints are elaborate enough to find strong prima facie materials in the same as to the alleged offence. As the Supreme Court again in the case of *V.Ravi Kumar vs State* reported in (2019) 14 SCC 568 has held that the High Court would exercise its inherent power under section 482 of the CrPC for quashing the FIR, in consideration of the facts and circumstances of

a particular case and the same would not be warranted where allegations made in the FIR, would prima facie constitute the offences, as alleged.

20. The employment relationship is the legal link between employers and employees. It exists when a person performs work or service under certain conditions in return for the remuneration. It is through the employment relationship, however defined, that reciprocal rights and obligations are created between the employee and the employer. Apart from the written contract of employment the relationship between an employer and its employees, is based on mutual trust. Trust continues to grow with time. Employees have a fiduciary obligation to act in the best interest of their employer. Likewise, the employer would be depended for a secured career of a person in his employment, yielding emoluments which would support the living of an employee and all dependent upon him. People start to think longer term career wise and even sign up for longer projects. The parties in this case had a mutual bearing of this kind, being employees (complainants) and their employees (accused person/petitioner). So long the complainants had advanced their labour to the company, they would naturally accept company's scheme for financial benefit to be genuine and payable to them, they being eligible employees. The complainants have been able to bring prima facie materials, vide their complainants, that the petitioner had induced them to render services on the garb of future benefit though had no further acted in terms of their own declaration.

21. It is noticeable that the legislature has not defined the term 'property' in IPC. The term 'property' having not be specifically defined, no element of restriction could have been placed on it, and the term 'property' contemplated under Section 415 IPC would include things in action and intangible property. The complainant had rendered his services as a quid pro quo for consideration. This by itself would fall under Section

420 IPC. Whether or not his entitlement would depend upon any contingency, is for the company to prove in a Court by providing appropriate materials.

- 22.** Therefore, the relationship of the complaints, till the date they were in service with the accused no. 1 company being that of trust and inter dependent, one cannot rule out existence of the elements of the offence of cheating and the other offences as alleged against the accused persons including the present petitioner, till the factual questions involved in these cases are determined by the trial Court. Therefore in my considered opinion it is not proper to weed out at the threshold the element of the offence as alleged against the petitioner, as it is submitted on behalf of them.
- 23.** Instead it is found that the basic ingredients of the offence as alleged against the petitioner having been put forth in the complaints as mentioned above, there is no scope for this Court in exercise of jurisdiction under Section 482 of the Cr.P.C, to quash the said complaints. Contrarily an expeditious trial is the call of the hour, in this case. Hence, the present revision cases CRR 4039 of 2015 and CRR 4040 of 2015, merit no success.
- 24.** CRR 4039 of 2015 and CRR 4040 of 2015 are dismissed. The trial Court in consideration of the span of time already elapsed since after filing of the complaints, shall exercise utmost expedition in proceeding with the trial of the cases and deliver judgment(s) at the earliest, without granting any unnecessary adjournment to any of the parties. It is however, made clear that none of the discussions or findings in this judgment, which are only for the purpose of disposing of these cases under Section 482 Cr.P.C, would bear any relevance to the proceedings, in the trial, to be conducted by the Magistrate. Trial of the abovementioned cases, before

the Magistrate, would proceed untrammelled by any observation or finding, in this judgment.

- 25.** CRR 4039 of 2015 with CRAN 13 of 2019 (Old No: CRAN 3369 of 2019) and CRR 4040 of 2015 with CRAN 8 of 2017 (Old No: CRAN 3735 of 2017) with CRAN 13 of 2019 (Old No: CRAN 3370 of 2019) are disposed of.
- 26.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay,J.)