

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3412 of 2014

Gobind Agarwal & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Pinaki Ranjan Mitra

For the State : Mr. Binay Panda
Ms. Puspita Saha

Heard on : 22.06.2023, 04.07.2023, 07.12.2023.

Judgment on : 11.12.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed for quashing of the impugned proceedings being Charge-Sheet No. 382 of 2012 dated 31.10.2012 under Sections 403/406/417/442/34 of the Indian Penal code arising out of Malipanchghara Police Station Case No. 286 of 2012 dated 21.08.2012 under Sections 403/406/417/442/34 of the Indian Penal Code pending before Learned Judicial Magistrate, 5th Court, Howrah being G.R. Case No. 5555 of 2012.

2. Petitioners stated that one Sukhendu Ghosh a tenant at premises no. 9 Akshay Kumar Chatterjee Lane filed an application under Section 156 (3) of

the Code of Criminal Procedure before the Learned Chief Judicial Magistrate Howrah inter alia stating the petitioner no. 1 to 3 to be the partners of Partnership firm namely "Balaji Realtors" and petitioner 1 and 3 entered into an agreement with petitioner no. 2 and 4 for development and construction of building at premises no. 9 Akshay Kumar Chatterjee Lane. Petitioner No. 1 and 2 entered into an oral agreement for sale of proposed Flat measuring with 550 sq. ft. at consideration of Rs.1040/- per square feet, amounting to a sum of Rs.5,72,000/-. Rs. 1,55,001/- was paid in advance to petitioner no. 1 and 2 and in spite of request of the Subhendu Ghosh, the petitioner no. 1 and 3 did not execute the agreement for sale of the said flat and the petitioners accepted the advance sum of money without entering into an agreement for sale which had been admitted in the written objection filed by the petitioner in another Suit no. 6 of 2012 arising out of an application under Section 9 of the Arbitration and Conciliation Act, pending before the Learned Additional District Judge, 2nd Court, Howrah. Finally petitioner no. 1 and 3 forwarded a copy of the draft agreement wherein the consideration for sale was mentioned as Rs.1200/- per square feet and requested the complainant to finalise the same and despite several requests the petitioners did not execute the agreement for sale and virtually given possession to the complainant who made necessary alteration to the fixtures and fitting as per his requirement by incurring expenses of Rs.30,000/- in the year 2010 but in the year 2011 the maternal uncle of the complainant who booked a flat in the said building could not avail Bank Loan to pay balance consideration to petitioner no. 1 and 3 as the petitioner no. 1 & 3 could not provide proper

documents including completion certificate. The maternal uncle of the complainant had purchased the requisite stamp papers for registration of the flat. The validity of the said stamp papers was to expire and the petitioners approached the complainant and requested him to transfer the amount to the account of maternal uncle of the complainant so that the conveyance deed for the flat of maternal uncle of the complainant could be executed and registered and represented to the complainant that his booking shall remain and he can pay the booking amount to them in two three months time and in good faith the complainant agreed to the proposal and consented to transfer the advance money paid by him in favour of his maternal uncle and after execution and registration of the flat the maternal uncle of the complainant repaid the complainant the sum of Rs.1,55,000/- so that complainant could pay the same to petitioner no. 1 and 3 the said sum but they refused to accept the same and the complainant came to learn that the petitioners had entered into an agreement with another person and the petitioner no. 1 and 3 had misrepresented the complainant and had cheated him.

3. In connection with the said complaint Malipanchghara P.S. Case No. 286 of 2012 dated 21.08.2012 under Sections 403/ 406/407/420/426 and 120B of the Indian Penal code had been instituted against petitioners.
4. Petitioners stated that Police Authorities conducted investigation on the basis of the said complaint and a Charge-Sheet being no. 382 of 2012 dated 31.10.2012 under Sections 403/406/417/442/34 of the Indian Penal Code

had been submitted against petitioner and discharged petitioners of the offences under Sections 420/426 and 120B of the Indian Penal Code.

5. Learned Advocate for the petitioner submitted that –

- i. The offence alleged to have been committed is a dispute of Civil nature and the opposite party no. 2 who has approached the Civil Court, failed to establish the existence of an agreement of acquiring flat and his application for interim relief has been rejected in absence of an agreement.
- ii. There exists no ingredients of offences alleged to have been committed by the petitioners and the criminal proceeding is totally and palpably illegal and liable to be set aside and quashed.
- iii. According to his own case opposite party no. 2 paid the advance amount which was adjusted by the petitioners as per his request for the consideration money of the flat acquired by Mrinal Kanti Sen at 9, Akshay Kumar Chatterjee Lane, Howrah. Accordingly the allegation of offence of cheating is absolutely false and baseless and the complainant could not establish the allegation before the Civil Court.
- iv. The allegation of offence as alleged is a dispute of civil nature and the same can be adjudicated by Civil Court and as such the entire criminal proceedings is illegal mala-fide and liable to be quashed.

6. Section 403 of the Indian Penal Code state as follows :

“Dishonest misappropriation of property- *Whoever dishonestly mis-appropriates or converts to his own use any movable property, shall be punished with imprisonment of*

either description for a term which may extend to two years, or with fine, or with both.”

7. Section 406 of the Indian Penal Code state as follows :

“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.”

8. Section 417 of the Indian Penal Code state as follows :

“Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

9. Section 442 of the Indian Penal Code state as follows :

“House trespass.—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”. *Explanation.*—The introduction of any part of the criminal trespasser’s body is entering sufficient to constitute house-trespass.”

10. There is no document on record to justify that the opposite party and the petitioners entered into an agreement and the complainant paid advance to the petitioners for acquiring a flat in the proposed building requested the petitioner to adjust the sum advanced by him against the consideration money of the flat acquired by his maternal uncle Mrinal Kanti Sen. The payment of an advance amount based on an oral agreement without contemporaneous circumstances to evince the same is devoid of any probative value.

11. Petitioners stated that the complainant filed an application under Section 9 of the Arbitration and Conciliation Act 1996 which was registered as other Suit No. 6 of 2012 alleged oral agreement with the petitioners for acquiring a flat measuring 550 sq. ft. The interim protection was denied and the said application was dismissed on contest.
12. According to his own case of the opposite party had requested the petitioners to adjust the sum paid by way of advance against consideration money for the flat acquired by his maternal uncle and the petitioners having acceded to the request cannot be considered to have committed the alleged offences. The dispute between the parties are essentially contractual in nature. The ingredients to constitute the offences under Sections 403/406/417/442/34 of the Indian Penal Code in view of the definitions enumerated and enacted are absent in this case.
13. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***¹ the Hon'ble Supreme Court observed as follows :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible

¹ 1992 SCC(Cri) 426

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 dispute between the parties are primarily civil in nature which can not be disguised with a criminal intent to implicate them. To allow such a proceeding will result in the abuse of process of law and accordingly the instant revisional application is allowed.
15. In view of the above discussions, the proceedings of Charge-Sheet No. 382 of 2012 dated 31.10.2012 under Sections 403/406/417/442/34 of the Indian Penal code arising out of Malipanchghara Police Station Case No. 286 of 2012 dated 21.08.2012 under Sections 403/406/417/442/34 of the Indian Penal Code pending before Learned Judicial Magistrate, 5th Court, Howrah being G.R. Case No. 5555 of 2012 are quashed.
16. The criminal revisional applications being CRR 3412 of 2014 is allowed.
17. Accordingly, CRR 3412 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.
18. There is no order as to cost.
19. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
20. 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.)