

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

CIRCUIT BENCH AT JALPAIGURI

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 154 of 2023

Gopal Bidyananda & Anr.

vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Nabankur Paul,
Mr. Abhishek Sarkar.

For the State : Mr. Aditi Shankar Chakraborty,
Mr. Nilay Chakraborty.

Hearing concluded on : 12.10.2023

Judgment on : 18.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding being G.R. Case No. 540 of 2023 arising out of Tufanganj Police Station Case No. 382 of 2023 dated 27.05.2023 under Sections 420/423/34 of the Indian Penal Code, presently pending before the Court of the Learned

Additional Chief Judicial Magistrate, Tufanganj, Coochbehar and all consequential orders passed in connection therewith.

2. The petitioner and the State who has placed the case diary are heard.

3. **In spite of due service there is no representation on behalf of the opposite party no. 2.**

4. The dispute in this case relates to sale of undivided share in an inherited property. The complainant has initiated a civil proceedings being Title Suit No. 19 of 2022 before the Court of the Learned Civil Judge (Junior Division) at Tufanganj. Corrections of Record of Rights as per prayer/application by the complainant being 154/19 under Section 50(i)(F) of WBLR Act has been disposed of by the BL & LRO, Tufanganj-I vide order dated 17.05.2023 as per directions of the Appellate Authority and necessary directions for correction of records has been passed. The present revision has been preferred on 12.06.2023.

5. The Hon'ble Supreme Court in ***Usha Chakraborty vs. State of W.B., Criminal Appeal No. Of 2022 arising out of SLP (Crl.) 5866 of 2022, on 30.01.2023*** held:-

“11. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of

the school and also the trust, would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice.”

6. The Supreme Court in ***M/s. Indian Oil Corporation vs. M/S NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006***, the Court considered the following point among the two points decided.

“8. The High Court by common judgment dated 23.3.2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the Respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arise for consideration :

(i) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 IPC ?

Re : Point No. (i) :

9. *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 Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E.*

Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(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 malafides/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 proceedings 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.

10. 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 break down 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 though criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :**

"It is to be seen if a matter, which is essentially of 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 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."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

7. The Supreme Court in **Satishchandra Ratanlal Shah vs. State of Gujarat & Anr., Criminal Appeal No.9 of 2019 (arising out of SPL (Crl.)**

No. 5223 of 2018), on 3 January, 2019, held that:-

“11. Coming to the aspect of quashing of the charges, it is well settled that such exercise needs to be undertaken by the High Court in exceptional cases. It is also well settled that the framing of charges being initial stages in the trial process, the court therein cannot be the decision of quashing the charge on the basis of the quality or quantity of evidence rather the enquiry must be limited to a prima facie examination[refer to State of Bihar vs. Ramesh Singh, 1977 CrLJ 1606].

14. Now coming to the charge under Section 415 punishable under Section 420 of IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168). In the case before us, admittedly, the appellant was trapped in economic crisis and therefore, he had approached the respondent no.2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the respondent no.2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

15. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations[refer to Gian Singh v. State of Punjab, (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and in-efficient transfers, under Section 415 of IPC.”

8. **Section 420 of the Indian Penal Code, lays down:-**

“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.

Ingredients of offence.— The essential ingredients of the offence under Sec. 420 are as follows:-

- (1) There should be fraudulent or dishonest inducement of a person by deceiving him;
- (2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or
 - (b) the person so induced to do anything which he would not do or omit if he were not so deceived, and
 - (c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are –

- (A) Deceit, that is to say dishonest or fraudulent misrepresentation, and
- (B) Inducing the person deceived to part with property.”

9. In the present case there is no case against the petitioners that they **dishonestly induced the complainant to deliver any property. There was no such inducement** to deliver any property as required. As such an essential ingredient required to constitute an offence under Section 420 IPC being prima facie not present, the offence alleged cannot be held to be proved against the petitioners/accused.

(Rekha Jain vs. The State of Karnataka & Anr., 2022 LiveLaw (SC) 468).

10. The dispute between the parties relates to transfer of undivided share in a joint property inherited by the parties and a civil suit is also pending between them initiated by the complainant/opposite party no. 2.

11. From the materials on record it is evident that the transaction between the parties is a civil (property) dispute. Thus, the ingredients required to constitute offences under Sections 420/423/34 of the Indian Penal Code are prima facie not present against the petitioners.

12. The present revision being CRR 154 of 2023 is allowed.

13. The proceeding being G.R. Case No. 540 of 2023 arising out of Tufanganj Police Station Case No. 382 of 2023 dated 27.05.2023 under Sections 420/423/34 of the Indian Penal Code, presently pending before the Court of the Learned Additional Chief Judicial Magistrate, Tufanganj, Coochbehar and all consequential orders passed in connection therewith, is quashed.

14. Interim order, if any, stands vacated.

15. All connected applications, if any, stand disposed of.

16. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)