

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH T JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

CRR 197 of 2023

**Ashish Kumar
Vs.
State of West Bengal & Anr.**

For the Petitioners : *Mr. S. N. Mukherjee,
Mr. Niroj Gupta,
Mr. Gunjan Sinha.*

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

Heard on : 17.10.2023

Judgement on : 19.10.2023

PARTHA SARATHI CHATTERJEE, J.:

1. The present petition has been preferred at the instance of the accused person/petitioner under Section 482 of the Code of Criminal Procedure, 1973(in short, the Code) praying for an order to quash the criminal proceeding being Pradhan Nagar Police Station Case no. 379 of 2023

dated 24.05.2023 under Sections 406/420 of Indian Penal Code, 1860 (in short, IPC) pending before the Court of learned Additional Chief Judicial Magistrate, Siliguri, Darjeeling.

2. Shorn of unnecessary details, the essential facts required to be stated for effective adjudication of the petition are that on 24.05.2023, one Dr. Swapnil Jaiswal of Thane, Maharashtra lodged one FIR in Pradhan Nagar Police Station, inter alia, alleging therein that Dr. Jaiswal was a member of a group of 18 numbers of tourist. They booked a tour and/or travel package with Ashish Kumar (in short, Ashish) through one Harsh Cab Services. The package included transportation & Hotel services in Darjeeling, Gangtok, Nathula Pass, Lachen, Lachun & Pelling for the period commencing from 16th to 24th May, 2023 (8 nights & 9 days) with further facility of pick-up and drop from New Jalpaiguri Railway Station (in short, NJP). It was alleged in the FIR, the group had paid Rs. 60,000/- in advance to Ashish and subsequent thereto, a further sum of Rs.2,00,000/- was also paid to Ashish by the members of the group. They also paid Rs. 75,000/- to the Cab drivers till their stay in Lachun. It was further alleged therein that Ashish had not paid any amount to the Cab drivers and Hotel owners. The complainant and members of his group made several attempts to contact with Ashish over phone and even by sending messages in his cell phone but Ashish kept his cell phone switched off. They had to pay extra amounts to the cab drivers and hotel owners in Gangtok and Pelling. They reported the matter to concerned

Police Station in Lachun since the cab drivers and the hotel owners created pressure upon them to pay the fare, rent and expenses for food and lodging.

3. Record reveals that on the basis of the FIR, one Pradhan Nagar Police Station Case no. 379 of 2023 dated 24.05.2023 under sections 406/420 IPC was started against Ashish. Ashish has preferred this petition praying for quashing the case.
4. Mr. Mukherjee, learned advocate appearing for the petitioner along with Mr. Gupta and Mr. Sinha vociferously contends that there was no written agreement to show that the Complainant or any person belonging to the group paid any amount to Ashish. He argues that the dispute is overwhelmingly and predominantly civil in nature and hence, continuation of criminal prosecution would be abuse of due process of the Court. He further contends that ingredients of sections 406/420 IPC are totally absent in the present case. To invigorate his submission, he laid immense emphasis on the judgment delivered in case of *Vijay Kumar Ghai & Ors. –vs- State of West Bengal & Ors.* , reported in (2022) 7 SCC 124.
5. Mr. Chakraborty, learned advocate for the State riposted the contentions canvassed by Mr. Mukherjee contending that there was express and implied contract in between Ashish and the group of the tourists that Ashish would pay the charges for transportation and hotel services to the Cab and Hotel Owners and Ashish took payment for that

purpose in advance but he did not pay any single penny to any of the Cab and Hotel owners. Since, Ashish accepted the money in advance, there was an entrustment. He vehemently contends that Ashish committed such offence with a malicious intention. He submits that if the criminal case is quashed, other tour operators will be encouraged in committing similar type of offences. He submits that a greater part of economy of this part of the country is based on tourism and if the offender like the petitioner is left without being tried, a wrong signal will go to the tourists and the persons associated with the businesses relating to tour and travel. He informs the Court that prayer for pre-arrest bail made by Ashish before the competent court of law has been turned down.

6. The settled principles relating to exercise the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (in short, the Code) to quash the complaints and criminal proceedings are that a complainant can be quashed where the allegations made in the complaint, even 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 complainant is to be read as a whole but without examining the merits of the allegations. A detailed inquiry and/or assessment of the reliability or genuineness of the allegations incorporated in the complaint is not warranted. A complaint may also be quashed where it is a clear abuse of process of the court or the criminal proceeding is found to have been initiated with a

malice to wreck vengeance or where the allegations are absurd or improbable. If a complaint is found to be bereft of basic facts which are necessary for making out the offence, the same may be quashed. It is condign to note that all necessary ingredients are not required to be stated in the complaint. Only the necessary factual foundation is required to be laid in the complaint.

7. Suffice it to observe that the facts set out in the complaint may make out purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute may furnish cause of action for seeking remedy in civil law but the same may also involve a criminal offence. Mere fact that the complaint relates to commercial transaction or contractual dispute for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations made in the complaint disclose a criminal offence or not. To lend support to this view reference may be made to the judgments delivered in cases of *Indian Oil Corporation –vs- NEPC India* reported in (2006) 6 SCC 736, *State of Haryana –vs- Bhajan Lal*, reported in 1992 Supp(1) SCC 335.

8. S.406 IPC prescribes punishment for criminal breach of trust. 'Criminal breach of trust' has been defined in S. 405 IPC which is reproduced as under:-

“405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits ‘criminal breach of trust.’”

9. The scope of S. 405 is very wide. Use of the expression ‘in any manner’ signifies that the section applies to the person who is in any manner entrusted with or dominion over the property. The essential ingredients of the offense of criminal breach of trust are:- (1) The accused must be entrusted with the property or with dominion over it; (2) The person so entrusted must dishonestly use or convert to his own use that property, or; (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation -(a) of any direction of law prescribing the mode in which such trust is to be discharged, or; (b) of any legal contract made touching the discharge of such trust.

10. The word ‘dishonestly’ has been defined in Section 24 of IPC in the words that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing ‘dishonestly’. So, the gist of the offence under Section 405 IPC is that entrustment of property and dishonest misappropriation thereof. A breach of trust may involve a civil wrong and the person wronged may

seek civil remedy but a breach of trust with *mens rea* gives rise to criminal prosecution as well.

11. Similarly, Section 420 IPC has prescribes punishment for cheating and dishonestly inducing delivery of property. S. 415 IPC defines ‘cheating. Section 415 IPC reads thus:-

“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”.”

12. The essential ingredients of the offense of cheating are: 1. Deception of any person; 2. (i) Fraudulently or dishonestly inducing that person- (a) to deliver any property to any person: or (b) to consent that any person shall retain any property; or (ii) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were no 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.

13. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

14. Section 420 IPC prescribes punishment for cheating and dishonestly inducing delivery of property which reads as under: -

“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.”

15. On studied scrutiny of the complaint, it is explicit that the complainant alleged that the complainant being a member of group of 18 tourists booked a tour package with Ashish for availing of Cab and Hotel service in Darjeeling, Gangtok, Natula Pass, Lachen, Lachun and Pelling and they paid Rs. 60,000/- in advance and subsequent thereto, they paid a further sum of Rs.2 (two) lakhs and even they paid Rs.75,000/- to cab drivers but Ashish did not pay any money to Cab and Hotel Owners.

16. If a tour operator accepts any such booking for providing transportation and hotel services to any tourist, it is an express or implied contract that charges for transportation, food and lodging etc. would be paid by such tour operator but if such amounts are not paid, obviously, the tour operator achieve wrongful gain and the later shall suffer wrongful loss. The group of tourists alleged that they paid Rs. 60,000/- in advance and they allegedly made further payment of Rs. 2

lacks. Hence, it prima facie appears that there was entrustment of property and Ashish without making payment of any amount to Cab and Hotel owners converted the money to his own use and by accepting money, he accepted the offer and no material has been placed to show that entrustments and/or obligations were carried out and/or discharged.

17. Hence, on perusal of the FIR, it cannot be concluded that the allegations made therein do not prima facie constitute any offence or make out the case alleged against the accused or the criminal proceeding is found to have been initiated with a malice to wreck vengeance or the allegations are absurd or improbable and continuation of present criminal proceeding would be abuse of process of the court.

18. In the case of Vijay Kumar Ghai & Ors. (*supra*), the respondent no.1 invested a certain amount of money in the company of the appellants to purchase some equity shares. The respondent no. 1 filed a complaint under Section 156(3) of the Code in Tis Hazari Court, New Delhi which was rejected holding that dispute is civil in nature. He filed another complaint in the court under section 200 of the Code read with S. 68 of the Company Act which is pending for adjudication. The respondent no. 2 filed a further complaint in the Court of CMM, Calcutta. The Hon'ble Supreme Court was pleased to hold that the respondent no.2 indulged in forum shopping and there was no criminal breach of trust rather the appellants failed to keep the promise and hence, the complaint and/or

the proceeding was quashed. Hence, it is vivid and luminescent that the judgment of Vijay Kumar Ghai & Ors. (*supra*) is distinguishable on facts.

19.In such sequence of facts and enunciation of law, there are no materials to infer that the complaint and the proceedings are required to be quashed. Consequently, the petition being **CRR no. 197 of 2023** is **dismissed**.

20.It is clarified that the investigating officer concerned and the learned trial court shall proceed with the investigation, enquiry and trial without being influenced by any of the observations made in this order since those observations are made only for the purpose of adjudication of this petition.

21. There is no order as to cost.

22. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

23.Let a copy of this order be sent to this Ld. Court below forthwith.

(Partha Sarathi Chatterjee, J.)