

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 111 of 2023

Sandipan Mukherjee & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Sayan Kanjilal.

For the State : Ms. Sreyashee Biswas,
Mr. Anindya Sundar Chatterjee.

Hearing concluded on : 28.11.2024

Judgment on : 09.12.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceedings being G.R. No. 168 of 2019 arising out of FIR being Narendrapur P.S. Case No. 06/2019 dated 02.01.2019 under Sections 420/406 of the Indian Penal Code, pending before the learned Additional Chief Judicial Magistrate, Baruipur.
2. The present case was initiated on the complaint of the *de facto* complainant dated 06.12.2018. The contents of the written complaint are required to be reproduced here for its relevancy:-

“.....That according to a ‘Deed of Agreement and Deed of Conveyance’, which one we purchased and registered on 14th July, 2014 at D.S.R-iv, at Alipore, 24 South Parganas, vide deed no. 1-05275/2014. That the deed was made by the said man and woman or may be their appointed legal expert, I and my wife (Subhra Dhar), as purchasers signed on the documents and gave them full payment sum of Rs.28,00501/- (Twenty Eight Lac Five Hundred One) and Rs.2,70000/- (Two Lac Seventy Thousand) for registration fees purposes on faith for the 938 sq. fts. a residential flat with super built up area, flat no. 1, of 1923, new K.B. Roy Garden, PO-Garia, PS-Sonerpur, DIST.-24 South Parganas, under Mouza Barhans Fartabad, Touzi. no.109, Dag No.798, Khatian No.338, within the limit of Rajpur Sonerpur Municipality Ward No.29, Kolkata-7000084.

That unfortunately we could not realise then that the seller and his wife (who signed as witness) either with pre-plan, according to a written agreement with us, they jointly, or of course intentionally fraud us because they have taken excessive money sum of Rupees 5,00000/- (Five Lac) on account of measuring 938 sq. fts in lieu of 799 sq. fts. for the sold residential flat and registration fee purpose. They received the total said value from us by cash and cheques from SBI at Mahamayatala Branch on account of the above

noted date of agreement and date of registration of the deed of conveyance.

That we both are senior citizens. We believed them as gentle couple due to that we could not check all written facts of the deed properly, it was a vital mistake from our side. Last month of March, 2017, I/We got the original deed of conveyance from the vendor. After read over the said document we find out so many vital errors and really deprived. We confirmed that the said vendors cheated us. Then and there, so many times till now, we are requesting them and a legal letter/notice also sent them, asking for return the excessive money and for cooperation for correction of the deed properly. Day after day they lost time and finally neither they cooperate properly with us for rectification the deed of conveyance nor returned the extra money us. Ultimately, they really cheated and frauded me/us.

*Later from reliable sources, we came to know that they are professional fraud and cheat and attached with cheat and fraud racket. Mr. Sandipon Mukherjee, is chief-coordinator of “**Sai Realty**”, it’s a business of promoters, developers, builders and their office situated at S/69, Kamdohari Purba Para, Near Mitali Sangha Play Ground, PO-Garia, Kolkata-700084, so please note this written complaint as first information report against the culprits and I promised I shall be compelled to cooperate with you for the same.....”*

3. The Hon’ble Supreme Court in **Lalit Chaturvedi vs. State of U.P, Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of 2023)**:

“5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the

Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.

6. *In “Mohammed Ibrahim v. State of Bihar”, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied:—*

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

7. *Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in*

the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari Lal Bhagwati v. CBI”, “Indian Oil Corporation v. NEPC India Ltd.”, “Vir Prakash Sharma v. Anil Kumar Agarwal” and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain”.

10. *The charge sheet also refers to Section 406 of the IPC, but without pointing out how the ingredients of said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The chargesheet does refer to Section 506 of the IPC relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us, that these allegations of threats etc. have been made only with an intent to activate police machinery for recovery of money.*

11. *It is for the respondent no. 2/complainant – Sanjay Garg to file a civil suit. Initiation of the criminal process for oblique purposes, is bad in law and amounts to abuse of process of law.”*

4. The Deed of Conveyance between the parties has been annexed to the revisional application.
5. The dispute in this case is a civil (property dispute) and permitting such a case would be an abuse of the process of law.
6. **CRR 111 of 2023 is thus allowed.**
7. The proceedings being G.R. No. 168 of 2019 arising out of FIR being Narendrapur P.S. Case No. 06/2019 dated 02.01.2019 under Sections 420/406 of the Indian Penal Code, pending before the learned Additional Chief Judicial Magistrate, Baruipur, **is hereby quashed in respect of the petitioners namely Sandipan Mukherjee and Ananya Mukherjee.**
8. All connected applications, if any, stand disposed of.
9. Interim order, if any, stands vacated.
10. Let a copy of the Judgment be sent to the learned trial court at once.
11. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)