

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 128 of 2023

Sudip Pal
Vs
The State of West Bengal & Anr.

For the Petitioner : Mr. Sukanta Chakraborty,
Mr. Anindya Halder.

For the State : Mr. Debasish Roy, Ld. PP
Mr. Arijit Ganguly,
Ms. Debjani Sahu.

Hearing concluded on : 28.11.2024

Judgment on : 16.12.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceedings in G.R. Case No. 871/17 pending before the learned Additional Chief Metropolitan Magistrate, 1st Court, Calcutta and the Charge-sheet therein being No. 106/17 dated 04.06.2017 under Section 506 of the Indian Penal Code in connection with Burtolla P.S. Case No. 101 dated 06.05.2017.

2. The allegations in the written complaint dated 12.04.2017 shows that the dispute is between the tenant and the petitioner who is the subsequent purchaser of the property, regarding vacating of the premises.
3. From the contents of the written complaint it appears that **the complainant prima facie apprehends forcible eviction.**
4. **The said apprehension of the complainant is to be addressed before the appropriate Civil Court as it relates to eviction.** The present case was initiated as the petitioner allegedly threatened the complainant of forcible eviction.
5. The learned Magistrate vide order dated 03.05.2017 directed the enquiry officer to draw proceedings under Section 506 of the Indian Penal Code, which is a non-cognizable offence but as admitted by the learned counsel for the State, the officer initiated an FIR and the same also ended in a charge-sheet. This appears to be prima facie abuse of the process of law. But considering that charge-sheet has been submitted, it is now for this Court to see whether any prima facie case under Section 506 IPC has been made out against the petitioner herein.
6. **Section 506 of I.P.C., lays down:-**

“506. Punishment for criminal Intimidation.-

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,

if threat be to cause death or grievous hurt, etc.-

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with

imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ingredients of offence.- *The essential ingredients of the offence under sec. 506 are as follows:-*

- (1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;*
- (2) The accused did so with intent to cause alarm to the victim of offence;*
- (3) The accused did so to cause the victim to perform any act which he was not legally bound to do.”*

7. Section 503 of I.P.C., lays down:-

“503. Criminal intimidation.—*Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*

Explanation.—*A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.*

Illustration

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B’s house. A is guilty of criminal intimidation.”

- 8. The complainant has also not appeared before the Court. The endorsement in the service return notes “left without any intimation”.
- 9. 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.”

10. **From the materials in the case diary it appears that admittedly there was just one occasion when the petitioner/owner allegedly asked the complainant/tenant to leave the premises. It was after this “one” alleged threat of eviction, the present case has been initiated.**
11. The Statement of one of the witnesses Pritam Tung at page 14 of the case diary who is an eye witness shows that the petitioner came and told the tenants to vacate the premises. **All the witnesses are tenants under the petitioner** and these witnesses have all stated that only one occasion the petitioner “allegedly” came and asked them to vacate the premises within 15 days.
12. A person who has purchased the property with tenants refusing to vacate will normally request the parties to vacate the premises before initiating proceedings for eviction. The ingredients required to substantiate the case of “criminal intimidation” is thus prima facie not made out against the petitioner and, as such, the proceeding is liable to be quashed.
13. **CRR 128 of 2023 is allowed.**
14. The proceedings in G.R. Case No. 871/17 pending before the learned Additional Chief Metropolitan Magistrate, 1st Court, Calcutta and the Charge-sheet therein being No. 106/17 dated 04.06.2017 under Section 506 of the Indian Penal Code in connection with Burtolla P.S. Case No. 101 dated 06.05.2017, **is hereby quashed in respect of the petitioner namely Sudip Pal.**
15. All connected applications, if any, stand disposed of.
16. Interim order, if any, stands vacated.

17. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
18. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)