IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 225 OF 2022
with
CRAN 1 OF 2024

SATYENDRA KUMAR SHUKLA
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner	:	Mr. Dipankar Aditya, Mr. Amitabhy Shukla.
For the State	:	Ms. Faria Hossain, Ms. Sonali Bhar.
Hearing concluded on	:	19.11.2024
Judgment on	:	28.11.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceeding that had been initiated by an application being S.L. No.221 of 2018 under Section 200 of the

Code of Criminal Procedure (Cr.P.C.) for charges under Sections 406 and 420 of the Indian Penal Code (IPC) pending before the learned Chief Judicial Magistrate, Alipore, 24 Parganas (South).

2. The petitioner herein submits that the opposite party no.2, the de facto complainant, filed an application under Section 156(3) of the Cr.P.C. against the petitioner herein and other accused persons.

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

4. Learned counsel for the State is present and has placed the case diary. It appears from the application under Section 156(3) of Cr.P.C. that the complainant herein has not provided any address of the petitioner and has given only his phone number.

5. The allegations stated in the application under Section 156(3) of Cr.P.C. are as follows:-

> *"**a.** The accused person no.1/Mr. Kailash Gupta who is also by profession a business man of same items like the de facto complainant/ Mr. Sanjay Kumar Gupta and to that effect both the parties are known each other.*
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> ***b.** It is stated that the complainant was called at the place of occurrence on 11.12.2017, wherein the complainant found that the accused persons were also present there, who also*

identified themselves as the business partners of the accused person no.1/Mr. Kailash Gupta and declared their mobile numbers as well as their identity with address and at the same time, all in conspiracy with each other, identified themselves as very reputed business men in the Eastern Zone (India) having contact with many reputed concerns and by applying their convincing power, induced the complainant to supply iron materials including iron rod and others as per documents to the petitioner's company giving assurance to pay the entire amount by cheque after receiving the said materials from the complainant's concern and accordingly ***upon the trust and belief*** *and with convincing power of the accused persons,* ***the complainant supplied the said iron material to the accused person no.1/Mr. Kailash Gupta's company through Invoice Number. GST/046/17-18 dated 11.12.2017 total amounting of Rs.12,01,734/- only after satisfaction and acceptance by the said accused persons*** *and subsequently the said proposed materials were received by the accused concern (company) with acknowledgement by putting seal and signature of the said concern (Company).*

c. *Thereafter receiving or accepting the said materials, the accused concern (Company) issued a post dated cheque in* *favour of the complainant being cheque no.175094 dated 19.03.2018 amounting of Rs.11,37,500/- drawn on State Bank of India, Jamshedpur, PO Bistupur, Dist. East Singhbhum, Jharkhand – 831001 Branch for encashment for discharging the liabilities of the accused persons and rest amount of Rs.64,234/- only would be paid in cash subsequently and upon the trust and belief of the accused persons for their assurance, the complainant agreed to receive the cheque and, subsequently, as per instruction of the accused persons deposited the said cheque with his bank, Punjab and Sindh Bank, New Alipore Branch on 20.03.2018 for encashment but the said cheque was dishonoured by the bank on 21.03.2018 with the remarks "payment stopped by drawer".*

d. ***The cheque was signed by accused no.1 Kailash Gupta on behalf of M/s Hariha International Pvt. Ltd. as director.*** *Thereafter as per procedure of law the complainant sent a demand notice upon the accused and after having knowledge of the said demand notice, the complainant was called for before the office of the accused persons wherein all the accused persons further by making conspiracy with each other assured the complainant about the entire amount of Rs.12,01,734/- along with late fees would be paid soon and prayed for at least 15 days for the* *same and as per business policy the complaint allowed the accused persons for consideration of such period as per their prayer. But after lapse of the said period which they prayed for when the complainant further personally contacted with them, the accused persons avoided to comply such assurance in respect of payment of dues without any cogent ground.*

e. *In the mean time the complainant came to know from different reliable sources of the business society that the accused persons are men of cheat who already committed cheat with so many persons like the complainant….."*

6. On being satisfied the Ld. Magistrate has been pleased to direct registration of FIR in the present case.

7. The petitioner in respect of his case has placed the following documents:-

a) A company master data of Harihar International Pvt. Ltd., shows the registered address of the company as Jamshedpur and the name of **the directors are Kailash Kumar Gupta and Satya Narayan Agarwal. The name of the present petitioner, prima facie, does not appear in the company master data.**

b) An agreement wherein it appears that Harihar International Pvt. Ltd. and other parties have entered into a joint-venture agreement. **Page 2 of the said agreement shows that the accused person No. 1 i.e. Kailash Gupta is the director of Harihar International Pvt. Ltd., Jamshedpur and the present petitioner Mr. Satyendra Kumar Shukla has been shown to represent Trimurty Sales Corporation.**

8. It is evident that the petitioner herein is prima facie connected with the company named Trimurty Sales Corporation and not Harihar International Pvt. Ltd, the accused in this case.

9. On the other hand, Ld. Counsel for the State has placed the case diary and submits that the letter issued by Indian Oil Corp. Ltd. dated 04.03.2020 shows that the present petitioner along with other accused persons had visited their site as representatives of Harihar International Pvt. Ltd. The said letter also shows that **surplus material belonging to Harihar International Pvt. Ltd. for which Indian Oil Corp. Ltd. did not make any payment were taken out by Harihar International Pvt. Ltd. after termination of contract.** Another letter issued by the Indian Oil Corp. Ltd. dated 14.02.2017 has been addressed to M/s. Harihar International Pvt. Ltd. calling for the attention of the present petitioner. The letter prima facie shows that the petitioner was prima facie involved in the supervision of the construction of the administrative building and security block of the said company.

10. It, thus appears that the dispute in the present case is between the complainant and the principal accused Mr. Kailash Kumar Gupta who is accused No.1 in the application under Section 156 (3) of Cr.PC and who has been shown as a director of the company.

11. 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."*

12. It is thus clear from the materials on record including the petition under Section 156 (3) Cr.P.C. that the petitioner, Satyendra

Kumar Shukla, was neither an office bearer of the accused no. 1's company nor did he issue the cheque in this case.

13. The petitioner is connected with a different company being Trimurty Sales Corporation and there is nothing on record to show the petitioners complicity in the present case. The Complainant has not even provided the address of the petitioner herein in his petition under Section 156 (3) Cr.P.C., and as such could not show any materials to show that the petitioner is in any way connected with the company of the accused no.1, Kailash Gupta.

14. The materials on record thus prima facie do not contain the ingredients required for the offences alleged and as such, continuation of the said proceeding in the present case shall be an abuse of the process of law/Court.

15. There thus being no ingredients required for the offences alleged against the petitioner prima facie, ends of justice calls for quashing of the case against him as non- interference will amount to an abuse of process of law.

16. The revisional application being CRR 225 of 2022 is allowed.

17. The proceeding that had been initiated by an application being S.L. No.221 of 2018 under Section 200 of the Code of Criminal Procedure (Cr.P.C.) for charges under Sections 406 and 420 of the Indian Penal Code (IPC) pending before the learned Chief Judicial

Magistrate, Alipore, 24 Parganas (South), **is hereby quashed in respect of the petitioner namely Satyendra Kumar Shukla.**

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

19. Interim order, if any, stands vacated.

20. Let a copy of the judgment be sent to the learned trial Court for compliance.

21. 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.]