**25.09.2024.**
**06.**
**Ct. No.237**
**Bd.**

**CRR 1256 of 2022**

Banshi Badan Pain
-vs-
The State of West Bengal & Anr.

Mr. Arkaprabho Roy
Mr. Radhesh Patra
Mr. Rhiddhiman Mukherjee
Mr. Soujanyo Pattanayak .....for the petitioner.

Mr. Suman De ... for the State

Mr. Baidurya Ghosal
Mr. Saikat Mukherjee
Ms. Anupama Biswas ... for the O.P.2

This application under section 482 of the Code of Criminal Procedure has been preferred with a prayer for quashing of the proceeding being G.R. No. 77 of 2022 presently pending before the learned Additional Chief Judicial Magistrate, Khatra, Bankura.

Petitioner submits that he applied for a house repairing loan before the bank authority and after verifying all the documents submitted by the petitioner and being satisfied upon the same, the bank authority sanctioned a loan amounting to Rs. 5,00,000/-. It was agreed that the Equated Monthly Installment (in short "EMI") amount of Rs. 7,400/- would be debited from the account of the petitioner maintained by the said bank. The petitioner further submits that District Primary School Council transferred his salary account from the branch of opposite party no. 2 to Khatra

Branch of Bankura District Central Co-operative Bank. He further submits that after the transfer of the aforesaid salary account of the petitioner, the petitioner duly paid his monthly installments to the bank of the opposite party no. 2, manually till 11th December, 2017 and petitioner has also paid various installments in the year 2018 but unfortunately petitioner has misplaced those documents in support of payment.

Petitioner further submits that all on a sudden on 24th February, 2022 the opposite party no. 2 lodged one complaint before the police inter alia alleging that the petitioner has willfully defaulted in paying the outstanding loan amount in spite of having the capacity to pay the same from his salary. On the basis of said written complaint present proceeding has been initiated and the petitioner was arrested on 26th February, 2022 by the investigating authority without issuing any notice under section 41 A of the Code of Criminal Procedure. However, on 5th March, 2022 the petitioner was granted bail by the Additional Sessions Judge, Khatra, Bankura.

The grievance ventilated herein by the petitioner is that bank authority never issued any notice regarding non-payment of the bank loan of the petitioner and he further submits that non-payment of the installments of the bank loan is a dispute which is purely civil in nature and there are separate statutes and separate forums to deal with such dispute and even if it is taken for granted that he is a willful defaulter, the Penal Provision cannot attract. He further submits that the opposite party no. 2 i.e., loan sanctioning authority have verified all the documents submitted by the petitioner and upon satisfaction they have granted the loan amount and the petitioner is ready and willing to pay all the admissible dues to the bank authority. In fact the opposite party no. 2 without making any contact with the petitioner and without issuing any notice regarding the payment of the outstanding amount and without giving reasonable opportunity to repay the same, they have initiated the aforesaid proceeding which is liable to be quashed.

Learned counsel appearing on behalf of opposite party submits that the petitioner intentionally shifted his bank account from the branch of opposite party no. 2 to some other bank in order to avoid payment and to defraud the creditor. Moreover, being headmaster of a school he has sufficient earnings to pay the loan amount but he intentionally declined to make the said payment in order to cheat the opposite party no. 2/bank and thereby he has misappropriated the outstanding amount. He further submits that police after completion of investigation has submitted charge-sheet against the petitioner under section 406/420 of the Indian Penal Code, and as such, the culpability and guilty mind of petitioner will reveal only after conclusion of the trial and the proceeding should not be quashed at its threshold without giving opportunity to the prosecution to prove their case.

Mr. De, learned counsel appearing on behalf of the State placed the case diary and submits that the allegation against the present petitioner is that he had taken the loan and he has the capacity to repay the loan but he intentionally defaulted in making payment in spite of several request and notices sent by the opposite party no. 2/bank.

I have considered the submissions made by both the parties.

Having gone through the FIR as well as materials in case diary, it is quite clear that FIR maker's grievance is regarding failure of the accused/petitioner to pay the outstanding amount, in spite of complainant's repeated demands. It further appears from their submissions that loan was granted to petitioner on 15.09.2009 and payment by way of EMI has been made by the petitioner at least till 11th December, 2017 and till then there was no dispute between the parties.

There is no allegation that petitioner/accused made any willful misrepresentation for getting that loan amount, rather it is not in dispute that the complainant on being satisfied about the documents furnished by petitioner entered into a valid loan agreement with the petitioner but the grievance of the opposite party no. 2 herein is that accused/ petitioner failed to discharge his contractual obligation in paying EMI.

Therefore it is not a case where no repayment has been made against that loan amount. Admittedly, it is a case of part payment. There is no factual foundation of the allegation of initial deception and such allegation is mere an inference drawn by the complainant from subsequent failure of the accused to keep his promise by making payment of the balance amount, even though according to the petitioner/accused he is ready and willing to pay the outstanding amount. A person who has repaid a substantial amount of loan, it cannot be said that such person had no intention to pay right from the beginning of the transaction. Accordingly, initial deception which is basis ingredient of the offence of cheating is conspicuously absent in the instant case.

In the present case, there was no dispute between the parties from 2009 till at least 2017. The ingredients of "entrustment", dishonest intention leading to delivery of property and cheating with knowledge to cause wrongful loss are not on record. The law clearly recognizes a difference between simple payment of money by way of loan and entrustment of money or property. A mere breach of agreement of loan does not ipso facto constitute the offence of criminal breach of trust contained in Section 405 of the Indian Penal Code without there being a clear case of entrustment. There is nothing either in the first information report or materials available in case diary pointing to the fact that any property was entrusted to the accused at all which he dishonestly converted for his own use to attract Section 405 of the Indian Penal Code.

The entire idea behind the present criminal proceeding seems to be to convert a civil dispute into criminal and put pressure on the petitioner/accused for repayment of the loan amount though it is well-settled that a criminal proceeding cannot be degenerated into a recovery proceeding. In **Lalit Chaturvedi & others Vs. State of Uttar Pradesh & others [ SLP 9 (crl) no. 13485 of 2023]** dated 06th February, 2024, the Apex Court has held

> *"We will assume that the assertions made in the complaint are correct, but even then, a criminal offence under Section 420 read with Section 415 of the IPC is not established in the absence of deception by making false and misleading representation, dishonest concealment or any other act or omission, or inducement of the complainant to deliver any property at the time of the contract(s) being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averments. A prayer is made to the police for recovery of money from the appellants. The police is to investigate the allegations which discloses a criminal act. Police does not have the power and authority to recover money or act as a civil court for recovery of money."*

In **Vesa Holdings P. Ltd. & another Vs. State of Kerala & Others, (2015) 8 SCC 293**, Apex Court held even if the intention to cheat has developed later on, the same cannot amount to cheating.

In **Lalit Chaturvedi's case (supra**), the Supreme Court also pointed out that the same act or transaction cannot result of an offence of cheating and criminal breach of trust simultaneously. The relevant portion of the judgment may be quoted here:-

> "*The chargesheet 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.*"

In such view of the matter, CRR 1256 of 2022 is allowed.

The impugned proceeding being G.R. No. 77 of 2022 arising out of Khatra Police Station Case No. 05 of 2022 dated 24.02.2022 presently pending before the learned Additional Chief Judicial Magistrate, Khatra, Bankura, is hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of usual formalities.

**(Ajoy Kumar Mukherjee, J**