

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 4413 OF 2022

With

CRAN 1 of 2022

M/S. R.M.S. POWER SOLUTIONS PRIVATE LIMITED & ORS.

VS.

THE STATE OF WEST BENGAL & ANR.

WITH

CRR 1541 OF 2022

With

CRAN 1 of 2022

MANOJ GARG & ANR.

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Pritam Priyo Dasgupta,
Mr. A. Choudhury,
Ms. Meena Agarwal,
Ms. Shivansi Indonia.

For the State : Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.

For the State (in CRR 1541 of 2022) : Mr. Anindya Sundar Chatterjee.

Hearing concluded on : 04.12.2024

Judgment on : 16.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of proceeding in connection with GR case no.6916 of 2021 arising out of Liluah PS case no.459/2021 dated 06.12.2021 under Sections 406/420/120B of IPC pending before the learned Chief Judicial Magistrate, Howrah.
2. The petitioner no.1 is a juristic entity registered under the relevant provisions of the Companies Act.
3. The present case has been initiated against the petitioners on the basis of a complaint by the de facto complainant herein on the allegations that the de facto complainant being the sole proprietor of M/s. P. B. Industries, Howrah, **entered into a business transaction** with the petitioners **in January 2020**. The allegation of the de facto complainant is that the accused persons in conspiracy with each other caused wrongful loss to the de facto complainant for an amount of Rs.21,29,103/- and hence the complaint in the present case was registered.
4. The de facto complainant has not appeared in the present case in spite of due service. The State has placed the case diary. From the dispute as evident from the written complaint, it appears that the **dispute arises out of a business transaction**.

5. The petitioners by way of supplementary affidavit has filed a copy of Memorandum of Understanding/ settlement between the petitioners and the de facto complainant/company wherein as per settlement the entire settled amount has been paid by the petitioners herein in favour of the de facto complainant. Copies of the cheques and demand drafts have been annexed. A money receipt issued by the learned Advocate for the de facto complainant has also been filed. It, thus, appears that the dispute between the parties has been amicably settled and as such the de facto complainant is not willing to come before this Court to contest the matter. The receipt of the entire payment by the petitioners herein is not denied by the learned counsel appearing for the complainant.
6. Relying upon the judgments of the Supreme Court in **Gian Singh vs State of Punjab, (2012) 10 Supreme Court Cases, 303**, the Court held:-

“The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender

and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put

to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

7. In *Anita Maria Dias & Anr. vs The State of Maharashtra & Anr. (2018) 3 SCC 290.*

The Court held:-

(a) Offences which are predominant of civil character, commercial transaction should be quashed when parties have resolved their dispute.

(b) Timing of settlement would be crucial for exercise of power or declining to exercise power (stage of proceedings).

8. 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.”

9. **From the materials on record it also appears that there is no prima facie case against the petitioners in respect of the offences alleged as the dispute between the parties arises entirely out of a business transaction and is thus prima facie commercial/civil in nature.**
10. **CRR 4413 of 2022 along with CRR 1541 of 2022 are allowed.**
11. The proceedings in connection with GR case no.6916 of 2021 arising out of Liluah PS case no.459/2021 dated 06.12.2021 under Sections 406/420/120B of IPC pending before the learned Chief Judicial Magistrate, **is hereby quashed in respect of the petitioners M/s R.M.S. Power Solutions Private Limited, Rakesh Ruhil, Mala Ruhil, Manoj Garg and Sakshyam Garg.**
12. **The case before the Trial Court in respect of other accused person Dalchand Solanki, sole proprietor of M/s. Deep Enterprises shall proceed in accordance with law.**
13. All connected Applications, if any, stands disposed of.
14. Interim order, if any, stands vacated.
15. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

16. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]