

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1650 of 2022

With

CRAN 2 of 2022

With

CRAN 7 of 2024

Smt. Sharmila Murarka & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Pawan Kumar Gupta,
Ms. Sarita Bagaria,
Ms. Sofia Nesar,
Mr. Santanu Sett,
Mr. Sankha Subhra Chakraborty.

For the State : None.

For the Opposite Party No. 2 : None.

Hearing concluded on : 06.12.2024

Judgment on : 20.12.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for order dated 08.03.2022 passed by the learned Additional Chief Judicial Magistrate, Alipore in complaint case being C-4176 of 2009, now pending as T.R Case No.19 of 2009, under Sections 467/406/420/120B of the Indian Penal Code, 1860.
2. By the order under revision the learned Magistrate has rejected the prayer of the petitioners herein for discharge.
3. **The allegations as made out in the written complaint are as follows:-**
 - i) That **M/s. Bhagirath Murarka H.U.F** consisted of only 3(three) persons as members of the H.U.F. They are :-
 - (a) Bhagirath Murarka (Karta).
 - (b) Shashi Murarka (wife of Bhagirath Murarka).
 - (c) Praveen Murarka (son of Bhagirath Murarka).
 - ii) After the death of Bhagirath Murarka only 2 (two) remaining persons i.e. wife and son remained Members of H.U.F with Praveen Murarka, the complainant, as Karta of M/s. Bhagirath Murarka, H.U.F, held shares and jewelleryes.
 - iii) On the very next day of the death of Bhagirath Murarka, Dr. Smt. Neeraja Rateria and Smt. Nisha Singhania, the accused nos.1 and 2 claiming themselves to be the Executors of a **purported "Will"** alleged to have been executed by Bhagirath Murarka, forcibly on 6th September, 2002, took away all documents consisting of individuals as well as M/s. Bhagirath Murarka H.U.F., Shares

Certificates, Jewelleries, Computer, Books of Accounts, Demat Papers, Cash and Cheque Books from the residence of the complainant which was aided and assisted by Sri Kashi Nath Jain. Father of Smt. Sharmila Murarka and Sri Ranjeet Murarka both practicing advocates.

- iv) The Income Tax Return submitted by Bhagirath Murarka in his individual capacity shows that Bhagirath Murarka purchased and sold share to Bhagirath Murarka H.U.F and kept the remaining shares in his individual name as per balance sheets as at 31st March, 2001 and 31st March, 2002.
4. The opposite party/complainant after having initially appeared in the present case has failed to appear for the final hearing.
5. 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.”*

6. It appears from paragraph 8 of the petition of complaint that the **complainant has already filed a Title Suit being No.2536 of 2008 and two executors filed PLA No.287 of 2007 before the Hon’ble High Court in its Original Side in Testamentary and Intestate Jurisdiction in respect of the prayer for Probate of the said Will.**
7. **CRR 1650 of 2022 is thus allowed.**
8. Accordingly, the order dated 08.03.2022 passed by the learned Additional Chief Judicial Magistrate, Alipore in complaint case being C-

4176 of 2009, now pending as T.R Case No.19 of 2009, under Sections 467/406/420/120B of the Indian Penal Code, 1860, **is hereby quashed, in respect of the petitioners namely Sharmila Murarka, Abhishek Murarka and Akshay Murarka.**

9. All connected applications, if any, stands disposed of.
10. Interim order, if any, stands vacated.
11. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
12. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)