

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 1607 of 2023

Anil Bhutoria & Ors.  
v/s.  
The State of West Bengal & Anr.

For the Petitioners:

Sr. Adv. Sandipan Ganguly,  
Adv. Sabyasachi Banerjee,  
Adv. Anirban Dutta,  
Adv. Priyanka Mukherjee,  
Adv. Priyanka Sarkar,

For the Opposite Party No. 2:

Adv. Suresh Kumar Sahani,  
Adv. Sanjay Banerjee, (through V.C.)

For the State :

Adv. Debasish Roy, Ld. P.P.,  
Adv. Saryati Datta,  
Adv. Sachit Talukdar,

Heard on: 21.08.2024

Date: 05.09.2024

**SUVRA GHOSH, J. :-**

- 1) By consent of the parties, the revisional application is taken up for consideration.
- 2) Heard learned counsels for the parties.
- 3) The petitioners who are the directors of M/s. Iceberg Builders Private Limited seek quashing of proceedings being G.R. Case no. 1403 of 2018 pending before the Learned Metropolitan Magistrate, 9<sup>th</sup> Court

Calcutta, presently re-designated as Learned Judicial Magistrate, 9<sup>th</sup> Court Calcutta.

- 4) Learned counsel for the first and second petitioners submits that the complaint has been lodged after an inordinate and unexplained delay of about eight years. The petitioners' company entered into an agreement for sale with the private opposite party on 9<sup>th</sup> September, 2009 in respect of the plot in question in terms of which the total consideration was decided at Rs. 1,20,00,000/-. The opposite party was liable to pay Rs. 45,00,000/- initially, Rs. 20,00,000/- on or before 30<sup>th</sup> June, 2010, Rs. 20,00,000/- on or before 31<sup>st</sup> December, 2010, another Rs. 20,00,000/- on or before 30<sup>th</sup> June, 2011 and the remaining amount of Rs. 15, 00,000/- upon receipt of intimation in writing of completion of the plotting, in terms of clause 9 of the agreement. Clause 13 of the agreement demonstrates that if the purchaser/opposite party failed to make payment as specified in the third schedule or failed to make payment of any one instalment within the stipulated time frame, the owner/developer would be entitled to cancel/rescind the agreement or in the alternative condone such default upon charge of 2 % per month on the outstanding amount compounded monthly. After initial payment of Rs. 45,00,000/- the opposite party failed to make payment of the balance sum and sought to lodge the present complaint on false and frivolous grounds with malicious intention. Charge sheet has been submitted against the petitioners mechanically for offence under sections 120B/420/406 of the Indian Penal Code. The case pertains to the agreement and failure

of the opposite party to pay the balance consideration, the dispute being purely civil in nature.

- 5) Learned counsel for the third petitioner has submitted that this petitioner was a minor at the relevant time and no case under section 120B/420/406 of the Indian Penal Code has been made out against him during investigation. There is no evidence to suggest that the plot in question was sold out to others for non-payment of the balance consideration by the opposite party. Since the civil remedy available to the opposite party was barred by limitation, the opposite party chose to lodge the present complaint on absolutely false and frivolous grounds.
- 6) Learned counsels have placed reliance on the authorities in Nageshwar Prasad Singh v/s. Narayan Singh and Another reported in (1998) 5 Supreme Court Cases 694, Murari Lal Gupta v/s. Gopi Singh reported in (2005) 13 Supreme Court Cases 699 and Ram Biraji Devi and Another Umesh Kumar Singh and Another reported in (2006) 6 Supreme Court Cases 669 in support of their contention.
- 7) Learned counsel for the private opposite party/defacto complainant has candidly submitted that allegation under section 406 of the Indian Penal Code does not lie against the petitioners.
- 8) Learned counsel has taken this Court to an order passed by a co-ordinate Bench of this Court on 17<sup>th</sup> June, 2022 in W.P.A. 11446 of 2020 wherein this Court directed the Officer-in-charge, Park Street Police Station to take steps to conclude the investigation within a period of three months from the date of communication of the order.

- 9) According to the private opposite party the petitioners failed to register the sale deed despite repeated communications made to them and payment of Rs. 45,00,000/- in terms of the agreement. The petitioners had the intention of cheating the opposite party right from inception of the agreement and deliberately failed to act in terms of the agreement.
- 10) Learned counsel for the private opposite party has placed reliance on the authorities in *Supriya Jain v/s. State of Haryana and Another* reported in (2023) 7 Supreme Court Cases 711, *R. Nagender Yadav v/s. State of Telangana and Another* reported (2023) 2 Supreme Court Cases 195, *K. Jagadish v/s. Udaya Kumar G.S. and Another* reported in (2020) 14 Supreme Court Cases 552, *Directorate of Enforcement v/s. Niraj Tyagi and Others* reported in 2024 Supreme Court Cases OnLine SC 134, *Rajesh Bajaj v/s. State NCT of Delhi and Others* reported in (1999) 3 Supreme Court Cases 259, *Priti Saraf and Another v/s. State (NCT of Delhi) and Another* reported in (2021) 16 Supreme Court Cases 142, *Iridium India Telecom Limited v/s. Motorola Incorporated and Others* reported in (2011) 1 Supreme Court Cases 74, *Abhinandan Jha and Others v/s. Dinesh Mishra* reported in 1967 Supreme Court Cases OnLine SC 107 and *State of Maharashtra v/s. Ramdas Shrinivas Nayak and Another* reported in (1982) 2 Supreme Court Cases 463 in support of his contention.
- 11) Learned counsel for the State has referred to paragraph 10 of the F.I.R. which states that the petitioners allegedly sold out the plot in question to others and have thereby cheated the complainant. Learned counsel has also drawn the attention of this Court to the charge sheet

which records that the petitioners misappropriated the complainant's money to the tune of Rs. 45, 00,000/- and they were absconding for which they could not be arrested despite repeated raids and search.

- 12) I have considered the rival contention of the parties and material on record.
- 13) It is not in dispute that the agreement of sale was entered into by and between the petitioners' company and the private opposite party on 9<sup>th</sup> September, 2009 and in terms of the third Schedule of the agreement, the private opposite party was liable to pay Rs. 45, 00, 000/- initially, then Rs. 20, 00,000 /- each within 30<sup>th</sup> June, 2010, 31<sup>st</sup> December 2010 and 30<sup>th</sup> June 2011 respectively and the balance amount of Rs. 15, 00,000/- within a month of receipt of intimation of completion of the plotting by the owners/developer (clause 9 of the agreement). The conveyance was to be executed thereafter. Admittedly the private opposite party paid only the initial sum of Rs. 45,00,000/- and did not pay the three subsequent instalments of Rs. 20,00,000/- each. There is no document on record to demonstrate that private opposite party made any endeavour to pay the sum or approached the petitioners for such payment. Clause 13 of the agreement says that in the event the purchaser failed to make payment as specified in the third Schedule or failed to pay any one of the instalments within the stipulated time frame, the owners/developer would be entitled to cancel/rescind the agreement or in the alternative condone such default upon charging 2% on the outstanding amount per month compounded monthly. Since the private opposite party admittedly failed to comply with the

terms of the agreement, the petitioners were at liberty to cancel/rescind the agreement, moreso, since the private opposite party did not approach the petitioners for delayed payment of the amount upon paying 2 % on the outstanding amount.

- 14) Though the private opposite party has complained that the petitioners have sold out/alienated the plots in question long back, no document has been produced in support of the said contention. The charge sheet records that despite request of the complainant the accused persons neither refunded the advance amount of Rs. 45,00,000/-, nor registered the deed in terms of the agreement. This Court fails to understand how such conclusion was arrived at by the Investigating Officer in absence of any evidence in this regard. Though there is nothing to suggest that the plot was sold out by the petitioners to others, such sale, if executed upon termination of the agreement due to non-compliance of its terms by the private respondent, may not have fallen foul of the contract. Taking queue from the authorities in *Murari Lal Gupta (supra)*, *Nageshwar Prasad Singh (supra)* and *Ram Biraji Devi (supra)*, this Court is inclined to hold that no guilty intention to deceive the private opposite party/complainant can be attributed to the petitioners, moreso, since it was the private opposite party and not the petitioners who failed to honour the agreement.

- 15) Charge sheet has been submitted in this case under section 120B/420/ 406 of the Indian Penal Code. Section 120B deals with punishment for the offence of criminal conspiracy which is defined in section 120A as hereunder:-

*“120-A. Definition of criminal conspiracy. - When two or more persons agree to do, or cause to be done,-*

*(1) an illegal act, or*

*(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.”*

- 16) Section 420 deals with cheating and dishonestly inducing delivery of property. Section 415 defines cheating as follows:-

*“415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”*

- 17) In the case in hand, no fraudulent or dishonest deception of the private opposite party is made out either in the complaint or during investigation. The allegations are bereft of any guilty intention or mens rea on the part of the petitioners at the inception. The alleged breach of contract is also attributable to the private opposite party and not the petitioners.

- 18) The Hon’ble Supreme Court, in the authority in R. Nagendra Yadav (supra), has observed that a complaint which discloses civil transaction may also have a criminal texture and the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. The Hon’ble Court, in the authority in

Supriya Jain (supra) has emphasised on the issue that the Court should apply the test as to whether the uncontroverted allegations as made out from the record of the case and the documents submitted therein prima facie establish the offence or not.

- 19) In the various authorities relied upon by the private opposite party, the Hon'ble Supreme Court has held that the power of quashing should be exercised sparingly with circumspection in the rarest of rare cases. One of the parameters for quashing of a complaint stated by the Hon'ble Court is whether the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.
- 20) There is no quarrel with the said proposition laid down by the Hon'ble Supreme Court. True, jurisdiction under section 482 of the Code, should be exercised with extreme care, caution and circumspection and should not be used to stifle or axe down a legitimate prosecution. The test is whether the uncontroverted allegations as made out in the complaint prima facie establish the case and also whether continuation of such complaint shall amount to abuse of the process of law.
- 21) Even at the cost of reiteration this Court is inclined to hold that the complaint or the attending circumstances of the case do not disclose any criminal offence, far less an offence under section 120B/420 of

the Indian Penal Code and continuation of such proceeding shall amount to abuse of the process of law.

- 22) In the result, the proceeding being G.R. Case no. 1403 of 2018 pending before the Learned Metropolitan Magistrate, 9<sup>th</sup> Court Calcutta, presently re-designated as Learned Judicial Magistrate, 9<sup>th</sup> Court Calcutta, be quashed.
- 23) Accordingly, C.R.R. 1607 of 2023 is allowed.
- 24) The connected application being C.R.A.N. 1 of 2024 is also disposed of.
- 25) There shall however be no order as to costs.
- 26) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

**(Suvra Ghosh, J)**