

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1433 of 2021

SHRI LALIT CHAKRABORTY & ANR.

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Manjit Singh, Senior Advocate
Mr. Amitabha Majumdar,
Mr. Biswajit Mal
Mr. Arkaprabho Roy
Mr. Soujanya Pattanayak.

For the State : Mr. Sandip Chakraborty.

Hearing concluded on : 10.12.2024

Judgment on : 10.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceeding being GR case no.975 of 2019 arising out of Jorasanko PS case no.225 of 2019 dated 20.08.2019 under Sections 420 and 120B of the Indian Penal Code, 1860 pending before the learned Additional Chief Metropolitan Magistrate – I, Kolkata.
2. The petitioners' case in short that they have been made accused persons in this case along with one Smt. Manju Bhattacharjee on the basis of an investigation started by the police after being directed by the Trial Court which passed an order under Section 156(3) of the Criminal Procedure Code, 1973, on the basis of an application filed by the opposite party no.2.
3. Admittedly there is an agreement between the parties dated 26th December, 2012.
4. **The allegations made in the written complaint are follows :-**
 - i. *The complainant, a partner of P. Bhogilal & Sons, is one of the parties to the agreement.*
 - ii. *The accused persons are the directors of Wychem Laboratories Ltd. and the accused company is also engaged in the business of manufacturing and supply of medicines.*
 - iii. *Since long the complainant's firm in response to the order placed by the Directors of Wychem Laboratories Ltd. supplied huge quantity of medicines on a*

periodical basis and the same was duly received by the accused persons.

iv. The complainant's firm delivered pharmaceutical products to the accused company on different dates during the financial year of 2014-15, 2015-16 and 2016-17 and the pharmaceutical products were received by all the accused persons. Subsequently the accused persons made few payments. But after 23.11.2015 the accused persons have stopped placing purchase order for pharmaceutical products. Since then there is an outstanding dues of Rs.32,88,895/-. The complainant's firm waited for a considerable period of time on different pretext. The complainant's firm waited all this while in anticipation that the accused persons will repay the complainant's firm but it did not yield any fruits. The complainant's firm gave several payment reminders for repayment of outstanding dues amounting to Rs.32,88,895/- but to no effect...."

5. The complainant has made allegations of misappropriation by the petitioner's company and has also submitted that the complainant had entrusted them with products which have been misappropriated and the said intention was wrong right from inception of the transaction.
6. Learned counsel for the State is present and has filed a report. Let the same be kept with the record. Ld. Counsel for the State submits that though the investigation as directed by the Court has been completed but in view of the direction of the Court, the final report could not be submitted. Perused the case diary.
7. 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.”*

- 8. In the present case,** there is a business arrangement by way of an agreement between the parties dated 26th December, 2012. The dispute between the parties is relating to outstanding dues. As the dues were not paid, the complainant initiated the present case.
- 9.** It is thus clear that the transaction between the parties was purely commercial and as such civil in nature.
- 10.** The ingredients required to constitute the offences under Section 420/120B of IPC is also prima facie not present in respect of the petitioners and as such there being no prima facie case, ends of justice requires that the proceedings against the petitioners should be quashed.
- 11. CRR 1433 of 2021 is thus allowed.**

12. The proceeding being GR case no.975 of 2019 arising out of Jorasanko PS case no.225 of 2019 dated 20.08.2019 under Sections 420 and 120B of the Indian Penal Code, 1860 pending before the learned Additional Chief Metropolitan Magistrate – I, Kolkata, **is hereby quashed in respect of the petitioners namely Lalit Chakraborty and Swarnali Chakraborty nee Bhattacharjee.**
13. All connected application, if any, stands disposed of.
14. Interim order, if any, stands vacated.
15. Let a copy of the Judgment be sent to the learned trial Court for compliance.
16. 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.]