IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 1691 of 2023

with

CRAN 1 of 2023

SETH TRADING COMPANY LIMITED

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner	**:**	Mr. Imran Siddiqui.
For the State	**:**	Mr. Madhusudan Sur, Ld. APP Mr. Dipankar Paramanick.
Hearing concluded on	**:**	14.11.2024
Judgment on	**:**	14.11.2024

SHAMPA DUTT (PAUL), J. :

IN RE : CRAN 1 OF 2023

1. CRAN 1 of 2023 is an application under Section 5 of the Limitation Act moved by the learned counsel for the petitioner in presence of the learned counsel for the State.

2. Considering the grounds as made out in the application and in the interest of justice, the delay is condoned. The application being CRAN 1 of 2023 is allowed and accordingly disposed of.

IN RE : CRR 1691 OF 2023

3. Affidavit-of-service filed shows that the private opposite parties have refused to accept the service. As such, the same is proper service. Let the same be kept with the record.

4. The present revisional application has been preferred against an order dated December 5, 2022 passed by the Learned Chief Metropolitan Magistrate at Calcutta in connection with case no.145 of 2022 (CS/115639/2022). By the said order the Learned Magistrate has been pleased to hold as follows :-

> "........*It appears that the dispute has arisen out of a commercial transaction and according to the complainant the business relationship between the complainant company and the accused persons is more that 22 years. It also appears there was a contract between the parties for supply of business goods for a total value of Rs. 61,75,792/- and according to that contract the complainant supplied the business goods for which total 50 account payee cheques were issued by the proposed accused persons but the cheques were all dishonoured and according to the complainant the accused persons cheated the complainant.*
>
> *Going by the facts of this case, inspite of contract between the parties and their long standing business*

relationship, even if the court believes that there is prima facie ingredient of offence of cheating, it finds no justification for ordering police investigation. Thus, the prayer for police investigation should be refused and keeping in mind the guidelines of Hon'ble Court in the case of ***Pranati Das @ Puja Seal Vs. State of West Bengal (Calcutta) 2020 SCC Online Cal 132****, cognizance of the alleged offence should be taken and this should be treated as complaint case.*

Hence ordered, that the prayer for police investigation is refused and cognizance of alleged offence of cheating is taken and the instant case be registered as a complaint case u/s 200 Cr. P. C.

Let the case record be transferred to Ld. M.M. 14th Court, Calcutta for disposal to law u/s 200 of Cr.P.C.......”

5. Being aggrieved, the petitioner has preferred the present revisional application praying for relief that the order of the Ld. Magistrate be set aside and his application under Section 156 (3) of the Code of Criminal Procedure, 1973 *(for short, Cr.P.C.)* be allowed and a police case registered. From the materials on record, it appears that the petitioner's company is a non-Government and public unlisted company classified as company limited by shares, registered under the Registrar of Companies.

6. The petitioner's case as made out in the application under Section 156(3) of Cr.P.C. is as that:-

“..... the Said Company had long business relation with the aforesaid opposite party no. 2 and 3, (hereinafter, the accused). Sometimes in the 2nd week of February, 2019 the opposite party no. 3 visited the office of the Said Company and placed order for the supply of jute products worth Rs.61,75,792/- only whereupon the Said Company as per the said order supplied the same to the aforesaid M/s. Subhlaxmi Trading Company on various dates. At the time of placing the order, the

> *said Dwarka Das Nandwana had promise to pay the full amount..........”*

7. It is the case of the petitioner that in spite of assurance the Opposite Party No.3 failed and neglected to pay the said amount of the company.

8. It is the further case of the petitioner that Cheque no.071131 dated 12.04.2020 for Rs.1,00,000/- drawn on IndusInd Bank, Himayat Nagar, Telangana Branch was deposited for encashment before the banker of the Said Company i.e. Punjab National Bank, Princep Street Branch, Kolkata, but the said cheque was returned back by the Banker of the accused persons with Bank remark “Fund Insufficient”. Subsequently, at the request of the said company, the accused rectified and revalidated the dates of most of the cheques with assurance of their encashment on presentation and in connection therewith they issued an undertaking dated 21.02.2022.

9. Thus as per the assurance of the accused, the said company deposited 5 of the cheques with revalidated dates bearing Cheque no.071172 dated 30.03.2022 for Rs.1,00,000/-, Cheque no.071173 dated 12.04.2022 for Rs.1,00,000/-, Cheque no.071174 dated 30.04.2022 for Rs.1,00,000/-, Cheque no.071175 dated 12.05.2022 for Rs.1,00,000/- and Cheque no.071132 dated 01.06.2022 for Rs.1,00,000/- for a total value of Rs.5,00,000/- all drawn on IndusInd Bank, Himayat Nagar Telagana Branch for their encashment before the Banker of the said company, i.e., Punjab National Bank, Princep Street Branch, Kolkata, but the said cheques were returned back by the Banker of the accused with the Bank remark “Account Closed”.

10. **It thus appears that admittedly the parties in the present case had a business relation since long about 22 years.**

11. It is the case of the petitioner that several cheques issued were dishonoured. The relief in respect of dishonoured cheques lies before another forum.

12. The learned Magistrate rightly held that even if there is a prima facie ingredient of cheating, there is no justification for ordering police investigation and **rightly converted the complaint of the petitioner into a complaint case** which is subject to proof by adducing evidence and is to be decided by the Magistrate in accordance with law.

13. In ***Lalit Chaturvedi & Ors. vs State of Uttar Pradesh & Anr., in Criminal Appeal No. ………… of 2023 (arising out of SLP (Crl.) No. 13485 of 2023), decided on February 06, 2024,*** the Supreme Court held:-

> ***“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”[4], 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"[5], 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"[6], "Indian Oil Corporation v. NEPC India Ltd."[7], "Vir Prakash Sharma v. Anil Kumar Agarwal"[8] and "All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain"[9].*

> ***10.*** *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.[10] 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."*

14. The dispute prima facie is a commercial dispute and this Court finds no reason to interfere with the findings of the learned Magistrate which is clearly in accordance with law and is thus affirmed.

15. The criminal revisional application being **CRR 1691 of 2023 is thus disposed of** with the direction that the learned Magistrate **shall proceed with the complaint case** expeditiously.

16. All connected applications, if any, stand disposed of.

17. Interim order, if any, stands vacated.

18. Let a copy of the judgment be sent to the learned trial Court for compliance.

19. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]