

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

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 1985 of 2023

With

CRAN 1 of 2023

Sri Subhesh Pradhan

V/s.

Sri Sanjib Pradhan

For the Petitioner:

Mr. Mayukh Mukherjee, Adv.,
Sk. Ariful Islam, Adv.,
Mr. Sarthak Mondal, Adv.

For the Opposite Party:

Mr. Ashim Kumar Routh, Adv.
Mr. Subhayan Barik, Adv.
Ms. Anindita Auddy (Das), Adv.

Heard on: 24.06.2024

Date: 05.07.2024

SUVRA GHOSH, J. :-

- 1) The petitioner seeks quashing of proceedings of complaint case no. AC-2258/2021 pending before the Learned Judicial Magistrate, 8th Court, Alipore, South 24 Parganas on the ground that there is no material against the petitioner under Sections 403/406 of the Indian Penal Code in the complaint.
- 2) Learned counsel for the petitioner has taken this Court to the complaint filed by the opposite party wherein the opposite party has

alleged that out of a total amount of Rs. 60,62,561/- due from the petitioner, Rs. 53,37,001/- was paid by the petitioner and Rs. 7,25,560/- is still due and payable.

- 3) Placing reliance on the authorities in *Medmeme, Llc and Others v/s. IHorse Bpo Solutions Private Limited* reported in (2018) 13 Supreme Court Cases 374 and *Vijay Kumar Ghai and Others v/s. State of West Bengal and Others* reported in (2022) 7 Supreme Court Cases 124, learned counsel has submitted that since the allegations made out in the complaint is of breach of contract on the part of the petitioner the question of fraudulent or dishonest intention on his part does not arise. The dispute is of a civil nature which has been given a criminal colour.
- 4) Per contra, learned counsel for the opposite party has submitted that since the petitioner defaulted in payment of part of the amount due, there is prima facie material against him under Sections 403/406 of the Indian Penal Code.
- 5) Learned counsel has relied upon the authorities in *Priyanka Srivastava and Another v/s. State of Uttar Pradesh and Others* reported in (2015) 6 Supreme Court Cases 287 and has submitted that the learned Magistrate was vigilant with regard to the allegations made in the complaint and has issued process upon verifying the truth and veracity of the allegations made therein.
- 6) Allegations against the petitioner in the complaint are under Sections 403/406 of the Indian Penal Code. It shall be useful to reproduce Section 403 of the Code for proper adjudication of the matter. Section

406 refers to the punishment for criminal breach of trust which has been defined in section 405 as set out hereunder.

“Section 403- Dishonest misappropriation of property.- *Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

“Section 405- Criminal breach of trust.- *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.*”

- 7) In the case in hand, the complaint pertains to a commercial transaction between the parties wherein the opposite party supplied raw cashew nuts to the petitioner worth Rs. 60,62,561 /- on several occasions out of which the petitioner has paid a sum of Rs. 53, 37, 001/-. The opposite party has alleged that the petitioner has not paid the remaining sum of Rs. 7,25,560/- , nor has returned the nuts of

the said value to the opposite party despite several requests. The allegation made out in the complaint is non-payment of the balance amount by the petitioner and it is not in dispute that substantial amount has already been paid. The complaint gives a clear picture of a case of alleged breach of contract on the part of the petitioner in not clearing the entire dues of the opposite party. It cannot be said that at the time of entering into agreement, there was any intention on the part of the petitioner to misappropriate the property/nuts dishonestly. Such breach of contract cannot in itself be termed as a criminal offence and in fact gives rise to civil liability of damages. {Medmeme, Llc and Others (supra) and Vijay Kumar Ghai and Others (supra)}.

- 8) True, jurisdiction under Section 482 of the Code ought to 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.
- 9) In the present case, the complaint filed by the opposite party does not disclose any dishonest misappropriation of property or fraudulent intention of the petitioner at the inception of the agreement. No prima facie case has been made out against the petitioner of dishonest misappropriation of property or dishonest use or disposal of property in violation of law. The alleged breach of contract has developed subsequently and there was no dishonest intention on the part of the petitioner at the inception. Mere insertion of Sections 403/406 of the

Penal Code in the complaint does not by itself make out a prima facie offence under the said provisions and it is the substance of the complaint which has to be taken into consideration.

- 10) In the premise, it can be concluded that the complaint does not disclose any criminal offence, far less an offence under Sections 403/406 of the Penal Code and continuation of such complaint shall amount to abuse of the process of law.
- 11) In the result, the proceedings of complaint case no. AC- 2258 of 2021 pending before the learned Judicial Magistrate, 8th Court, Alipore, South 24 Parganas be quashed.
- 12) C.R.R. 1985 of 2023 is accordingly allowed.
- 13) There shall however be no order as to costs.
- 14) Copy of this judgment be sent to the learned Judicial Magistrate, 8th Court, Alipore, South 24 Parganas for information and necessary action.
- 15) 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)