IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1760 of 2017

With

CRAN 10 of 2024

Rahul Tantia and Another

Versus

M/s. Garg Brothers Pvt. Ltd.

For the Petitioners	:	Mr. Ayan Bhattacharya, Adv. Mr. Arpit Choudhury, Adv.
Heard on	:	04.11.2024
Judgment on	:	04.12.2024

Ajay Kumar Gupta, J:

1. Petitioners have filed this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceeding of Case No. CN/16012/2017 under Sections 406/409/420/506(II)/120B/34 of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 19th Court at Calcutta (T.R. 1660 of 2017).

2. The factual matrix of the instant case leading to filing of this Criminal Revisional application is as under:

2a. The Opposite Party herein had lodged a petition of complaint against three accused persons including the Petitioners herein before the Court of the Learned Additional Chief Metropolitan Magistrate at Calcutta alleging, *inter alia*, that in the 1st week of June 2012, the Petitioners approached the Opposite Party and sought for financial help after representing them as Directors of M/s. Tantia Agrochemicals Pvt. Ltd. and as the company suffering from financial crisis. To meet the same, they needed financial accommodation of Rs. 3 Crores. It was also agreed to pay the amount of such economic assistance in due course.

2b. On 12.06.2012, the complainant company extended such loan accommodation of Rs. 3 Crores through Real Time Gross Transfer (RTGS) from IDBI Bank, Brabourne Road, Kolkata to the company's bank account at Axis Bank, Dalhousie, Kolkata and for that the accused persons issued the official receipt acknowledging the receipt of the loan amount.

2c. It was further alleged that out of Rs. 3 Crores, a partial payment was made by the accused persons but they failed to make payment of Rs. 1.75 Crores citing financial stringency and deferred the payment after considerable period of time. The accused persons issued and handed over four A/c payee cheques bearing nos. 177060 for Rs. 25 Lakhs, No. 177061 for Rs. 50 Lakhs, No. 177062 for Rs. 50 Lakhs and No. 177063 for Rs. 50 Lakhs all dated 01.10.2016 and all drawn on State Bank of India, Commercial Branch, Kolkata from the bank A/c of accused no. 1, M/s. Tantia Agrochemicals Pvt. Ltd. and the said cheques were signed by accused No. 2 with a representation that the cheques would be encashed in spite of knowledge very well that they have no funds in their bank account. As a result, the issuance of those cheques was likewise fraud committed upon the complainant.

2d. It was further alleged that the complainant company sent a legal notice on 27.01.2017 but to utter dismay of the complainant and other representatives of the complainant company, have been threatened with dire consequences by the accused nos. 2 and 3 and at their instances by the other local hoodlums and further refused to pay the said amount. As such, accused persons had knowingly and fraudulently made false representation as a trick to get hold of amount as aforesaid without having any intention of repayment on time and subsequent thereto to cheat the complainant company. The accused persons are, therefore, guilty of committing offences of Criminal Breach of Trust, Cheating and criminal intimidation punishable under Sections 406/409/420/506(II) read with Sections 120B/34 of the Indian Penal Code, 1860.

2e. On the contrary, the case of the petitioners is that dispute actually arose out of a commercial transaction wherein substantial amount has been re-paid by the accused persons.

However, the Learned Additional Chief Metropolitan Magistrate was pleased to take purported cognizance without applying his judicious mind after examining the representatives of the Opposite Party and one witness. The Learned Magistrate issued process under Sections 406/409/420/506(II) read with Sections 120B/34 of the Indian Penal Code, 1860 to the Petitioners and fixed the next date on May 24, 2017 though the Petitioners are innocent and in no way connected with the offence as alleged therein. Hence, the present Criminal Revisional application.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel appearing on behalf of the Petitioners submitted that the allegations made against the present petitioners are fraught with antagonistic contradictions and inherent absurdity. No ingredients of the offences, as alleged by the complainant, are made out in the petition of complaint.

3a. It was further submitted that the complainant tried to involve the Petitioners in a criminal case without any specific role or participation in the alleged offences with a sole purpose of recovery or settle the dispute with M/s. Tantia Agrochemicals Pvt. Ltd. The Petitioners do not have any role in the allegations as claimed by the Opposite Party since the Petitioners have no involvement in the allegation made by the Opposite Party at the relevant point of time. There is no specific allegation with regard to their role for vicarious liability. The allegations in the impugned complaint are vague inasmuch as the allegations do not reflect any ingredients of the offences as alleged qua the petitioners herein. The complainant is attempting to paint a civil dispute into a criminal proceeding. Substantial amount has already been paid by the accused no. 1 and same was admitted in the said petition of complaint. So, there is no culpable intention right at the beginning of the transaction. A distinction between mere breach of contract and the offence for cheating is the intention of the accused at the time of inducement. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent and dishonest intentions are shown at the beginning of the prosecution.

3b. The Petitioners contended that they were not entrusted with any property of the Opposite Party which could have been misappropriated by the Petitioners. In absence of element of 'entrustment' and 'misappropriation', no case of criminal breach of trust can at all be said to be committed. Therefore, the allegation is absolutely baseless, frivolous and constituted a clear misuse of criminal law and failed to disclose in commission of offence by the Petitioners. Therefore, the orders of taking cognizance and issuance of process in the proceeding being Case No. CN/16012/2017 under Sections 406/409/420/506(II)/120B/34 of the Indian Penal Code, 1860 against the Petitioners are abuse of process of law and to secure the ends of justice, the Court may quash the proceeding and set aside the orders passed therein.

3c. Learned counsel appearing on behalf of the Petitioners referred three judgments as under to support his contentions: -

i. Naresh Kumar & Anr. Vs. The State of Karnataka & Anr.[1];

ii. Lalit Chaturvedi and Others Vs. State of Uttar Pradesh and Another[2];

iii. Vir Prakash Sharma Vs. Anil Kumar Agarwal and Another[3].

[1] 2024 (3) SCALE;
[2] 2024 SCC OnLine SC 171;
[3] (2007) 7 SCC 373.

4. None represented the Opposite Party and no accommodation was sought for at the time of call. Accordingly, the hearing was concluded in his absence. The record is taken up for disposal.

<u>DISCUSSIONS AND CONCLUSION OF THIS COURT:</u>

5. Heard the arguments of the learned counsel for the Petitioners and on perusal of the record as well as judgments referred by the learned counsel appearing on behalf of the Petitioners, this Court finds it is admitted fact that the Complainant's Company parted with a sum of Rs. 3 (Three) Crores via RTGS in favour of the accused No. 1, M/s. Tantia Agrochemicals Pvt. Ltd. ('the company') and Petitioners are the Directors of the said Company.

6. In the present case, there is no indication that at the very inception, there was any intention on behalf of the Petitioners to cheat, which is a condition precedent for an offence under Section 420 of the Indian Penal Code, 1860. Furthermore, the complaint does not provide any evidence to suggest that the Petitioners had dishonest and fraudulent intention at the time, when the Opposite Party had been parted with money because from the complaint itself, it reveals that the Petitioners represented the Company by saying they were suffering from a financial crisis and that to meet the same they needed financial accommodation of Rs. 3 (Three) Crores. The accused persons agreed to repay the amount of such economic assistance in the due course and also produced various documents in support of their status. In spite of knowing the status of the accused persons, the Complainant Company parted with aforesaid money.

7. Dispute arises between the parties when the said company allegedly failed to pay the outstanding amount of Rs. 1,75,00,000/- (Rupees One Crore Seventy-Five Lakhs) only. Admittedly, accused company has paid Rs. 1,25,00,000/= (Rupees One Crore Twenty-Five Lakhs) only out of Rs. 3,00,00,000/- (Rupees Three Crores) only. The accused company has issued and handed over four A/c payee cheques bearing nos. 177060 for Rs. 25 Lakhs, No. 177061 for Rs. 50 Lakhs, No. 177062 for Rs. 50 Lakhs and No. 177063 for Rs. 50 Lakhs all dated 01.10.2016 and all drawn on State Bank of India, Commercial Branch, Kolkata from the bank A/c of accused no. 1, M/s. Tantia Agrochemicals Pvt. Ltd. and the said cheques were signed by accused No. 2 with a representation that the cheques would be encashed knowingly fully well that they have no funds in their bank account.

8. Now, the question arises that issuing cheques knowingly fully well that they have no funds in their bank account and non-payment of balance amount of Rs. 1,75,00,000/= to the complainant company would constitute offence punishable under Sections 406/409/420/506(II)/120B/34 of the Indian Penal Code, 1860?

9. Dispute arose out of a commercial transaction. Non-payment of amount, subsequently, is apparently case of civil in nature and that could be decided by Civil Court. No other prima facie ingredients were made out by the Opposite Party in a petition of complaint regarding offence punishable under Sections 406/409/420 of the Code of Criminal Procedure, 1973 as alleged.

10. Upon careful perusal of the petition of complaint, it appears that there was no fraudulent or dishonest inducement or deception by intentional practice by the Petitioners right from the beginning. Even if subsequent payment has not been made, that will not tantamount to deception, fraudulent or dishonest inducement nor would it amount to deception by intentional means right from the beginning. It is not the case of the complainant that the accused company or the Petitioners have not paid any amount from the very beginning. It is admitted fact that they have paid substantial amount to the complainant.

11. This Court also relied on several Judgments rendered by the Hon'ble Apex Court on this issue. Those are taken up herein below:

The Hon'ble Supreme Court in the case of ***The State of Kerala v. A. Pareed Pillai and Anr.*** has held as follows: -

> *"To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise."*

Similarly, in the case in hand, there was nothing to show that the Petitioners had dishonest or fraudulent intention at the time when they received the amount from the complainant's company. It is not disputed by the complainant that the company had not received any part payment. However, complainant raised question about the non-payment of balance amount, by no stretch of imagination, can be called dishonest inducements. It was purely commercial dispute which definitely comes under civil dispute. Simply because of the amounts have not been paid or there are outstanding, will not make it a case of wilful or dishonest inducement or deception or criminal breach of trust.

Judgment relied by the Petitioners in ***Vir Prakash Sharma V. Anil Kumar Agarwal and Another***, the Hon'ble Apex Court held that: -

> *"7. The principle underlying exercise of jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure is now well-settled viz. that the allegations contained in the complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence or not is the question.*
>
> *8. The dispute between the parties herein is essentially a civil dispute. Non-payment or under-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. No offence, having regard*

to the definition of criminal breach of trust contained in Section 405 of the Indian Penal Code can be said to have been made out in the instant case. Section 405 of the Indian Penal Code reads, thus:

> *"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'."*

Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made.

9. Ordinarily, bouncing of a cheque constitutes an offence under Section 138 of the Negotiable Instruments Act. No complaint thereunder had been taken.

10. We are, therefore, left only with the question as to whether in a situation of this nature *any offence of cheating can be said to have been made out.*

11. Section 415 of the Indian Penal Code defines cheating to mean:

> *"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'."*

12. In Hridaya Ranjan Prasad Verma and Others v. State of Bihar and Another [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], this Court held: (SCC pp. 176-77, paras 14-15)

> *14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would*

not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."
[See also Indian Oil Corpn. v. NEPC India Ltd. and Others (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188]

13. The ingredients of Section 420 of the Indian Penal Code are as follows:

i) Deception of any persons;

ii) Fraudulently or dishonestly inducing any person to deliver any property; or
iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception."

12. Considering the aforesaid observations of the Hon'ble Supreme Court, this Court is of the view that it is not the case of the Opposite Party, in the present case, that he was deceived or cheated by fraudulent or dishonest inducement from the beginning of transaction rather admits the Petitioners represented the Company by saying they were suffering from a financial crisis and that to meet the same they needed financial accommodation of Rs. 3 (Three) Crores. The accused persons agreed to repay the amount of such economic assistance in the due course and also produced various documents in support of their status. In spite of knowing the status of the accused persons, the Complainant Company parted with aforesaid money.

13. In the case of ***Paramjeet Batra v. State of Uttarakhand***, the Hon'ble Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure, 1973, it should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

> *"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has*

> *happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."*
>
> *(Emphasis supplied)*

14. In the light of above observations together with averments contained in the petition of complaint, this Court is of the opinion that the ingredients of the offences alleged by the Opposite Party are absent. The mere non-payment of balance amount and deferment of payment on the plea of financial stringency as alleged by the complainant, does not constitute offences punishable under Sections 406/409/420 of the Indian Penal Code, 1860. The allegation in Court complaint does not spell out any essential ingredient for commission of offence under Sections 506 (II). Mere allegation of threat without specific role attributing against the Petitioners herein with regard to time, place and manner is meaningless. The disputes between the parties are purely civil in nature and criminal proceeding in such a civil nature case should not be allowed to be continued any further against the present Petitioners.

15. Accordingly, **CRR No. 1760 of 2017** is **allowed**. **CRAN 10 of 2024** and all connected applications, if any, are also, thus, disposed of.

16. Consequently, the proceeding being Case No. CN/16012/2017 under Sections 406/409/420/506(II)/120B/34 of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 19th Court at Calcutta (T.R. 1660 of 2017) is hereby quashed insofar as the Petitioners are concerned and issuance of summons thereof upon the Petitioners are also, thus, set aside.

17. Let a copy of this Judgment be sent to the Learned Trial Court for information.

18. Interim order, if any, stands vacated.

19. Case Diary, if any, is to be returned to the learned counsel for the State.

20. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

21. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)