IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2281 of 2011

Naveen Agarwal
-Vs-
The State of West Bengal and Anr.

For the Petitioner	: Mr. Sandipan Ganguly Mr. Debangan Bhattacharyya Ms. Swarnali Saha Mr. Karan Dudhewela
For the Opposite Party No.2 (Amicus Curiae)	: Mr. Avishek Sinha
Heard on	: 06.12.2023, 05.01.2024, 29.02.2024, 06.05.2024
Judgment on	: 08.08.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner praying for quashing of the proceedings of Case No. C-11974 of 2010 pending before the Court of the Learned 8th Metropolitan Magistrate, Kolkata under Sections 406/420/120B of the Indian Penal Code.
2. The petitioner was an ex-director of a company named and styled as M/s Zoom Ballav Steel Ltd. The petitioner was appointed as director in the said company in the year 2007 and subsequently tendered his resignation, with

immediate effect, through a letter dated 17.01.2009 addressed to the Board of Directors of the said company. The said resignation of the petitioner as director from the said company was duly accepted by M/s Zoom Ballav Steel Ltd. and Form 32, as provided under the Companies Act, was filed by the said company with the Registrar of Companies, NCT of Delhi and Haryana on 20.1.2009 thereby informing the said authority about the resignation of the petitioner as Director of M/s Zoom Ballav Steel Ltd. with effect from 17.01.2009.

3. The opposite party no. 2 filed a petition of complaint before the Court of the Learned Chief Metropolitan Magistrate, Kolkata, inter alia alleging commission of offences by the petitioner and others punishable under Sections 406/420/120B of the Indian Penal Code. The said petition of complaint was registered as Case No. C-11974 of 2010.

4. The narrative of the complaint as aforesaid comprised as follows:-

   a) One Param Saxena (accused no. 14) approached the complainant/opposite party no. 2 company for selling 600 Metric Tons of iron ore of Fe 61% grade at the rate of Rs.5,100/- per ton inclusive of VAT. Accepting such offer from the aforesaid accused person, the opposite party no.2 company placed a purchase order vide letter dated 18.12.2010 and made full payment of the total amount to the tune of Rs.25,50,000/- through its bank, namely Oriental Bank of Commerce, Overseas branch, 7/1, Lord Sinha Road, Kolkata 700 071, by way of

RTGS via UTR No. ORBCH10352088883 into the account of the accused company maintained with Bank of India, Bistupur branch.

b) As the ordered materials were removed from the place of the accused no.1 company, the opposite party no.2 company detected that the accused no.1 company forwarded only 260.37 Metric Tons of the inferior quality of iron ore bearing Fe of 57.48%, value of which, according to the complainant/opposite party no.2, could not exceed Rs.3,500/- per ton.

c) The officials of the accused company agreed to refund the excess amount on the very next day of being notified.

d) However, the accused persons did not refund the excess amount to the complainant company inspite of repeated requests by the officials of the complainant/opposite party no.2 company over telephone and otherwise.

e) The intention to deceive the opposite party no.2 company was perceived as the accused no.14 in order to induce the opposite party no.2 company to pay the aforesaid sum of money had supplied a part of the ordered consignment of inferior quality on false representations.

f) The accused no.1 company, with mala fide intent and in order to cheat the opposite party no.2 company, willfully delayed to refund the excess money as paid to them and hence committed offences punishable under Sections 406/420 of the Indian Penal Code.

5. Considered the rival contentions of the Learned Advocate for the petitioner and the Learned Amicus Curiae representing the Opposite Party.

6. In ***Raju Krishna Shedbalkar v. State of Karnataka***[1], the Hon'ble Supreme Court held the following:-

> ***"9.*** *Further, in the case of Indian Oil Corporation v. NEPC India Ltd. (2006) 6 SCC 736 this position was reiterated in the following manner:*
>
> *33. The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no "cheating". The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (f) and (g) to Section 415 make this position clear:*
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> *"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.*
>
> *(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."*
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> *(emphasis supplied)*

[1] 2024 SCC OnLine SC 200

7. In ***Lalit Chaturvedi v. State of U.P.***[2], *the Hon'ble Supreme Court* held the following:-

> ***"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)."*

[2] 2024 SCC OnLine SC 171

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."

8. In ***Usha Chakraborty v. State of W.B.***[3]**,** the Hon'ble Supreme Court observed the following:-

> ***"12.*** *…* ***Offence of criminal breach of trust punishable under Section 406, IPC.***
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> *(i) Entrustment of the property or any dominion over property with accusation; (ii) The person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing 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 willfully causing sufferance to any other person so to do. …*
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> *…* ***Offence punishable under Section 420, IPC.***
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> *To constitute the said offence there must be deception i.e., the accused must have deceived someone; that by such deception the accused must induce a person (i) to deliver any property; or (ii) to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or (iii) that the accused must have done so dishonestly. The offence punishable under Section 120B, IPC, to constitute criminal conspiracy, there must be*

[3] 2023 SCC OnLine SC 90

agreement between two or more persons. The agreement should be to do or cause to be done some illegal act, or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove; or (iv) that some act besides the agreement was done by or more of the parties in pursuance of it.

…

16. *… As noticed hereinbefore, the respondent alleged commission of offences under Sections 323, 384, 406, 423, 467, 468, 420 and 120B, IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 468, 420 and 120 B, IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature.…"*

9. In ***Bharateesh Reddy v. Ramesh Ranganathan***[4] the following was held by the Hon'ble Supreme Court:-

> ***"13.*** *The ingredients of the offence under Section 415 emerge from a textual reading. Firstly, to constitute cheating, a person must deceive another. Secondly, by doing so the former must induce the person so deceived to:*
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> *(i) deliver any property to any person; or*
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> *(ii) to consent that any person shall retain any property; or*
>
> *(iii) intentionally induce 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 such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.*
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> ***14.*** *Section 420 deals with cheating and dishonestly inducing delivery of property. It reads as follows:*
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> *"**420. Cheating and dishonestly inducing delivery of property**.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*
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> ***15.*** *In Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] , a two-Judge Bench of this Court interpreted Sections 415 and 420IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant*

[4] (2022) 16 SCC 210

extract from the judgment reads thus : (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 of 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."

(emphasis supplied)

16. *In Dalip Kaur v. Jagnar Singh [Dalip Kaur v. Jagnar Singh, (2009) 14 SCC 696 : (2010) 2 SCC (Cri) 223] a two-Judge Bench of this Court held that a dispute arising out of a breach of contract would not amount to an offence of cheating under Sections 415 and*

420. The relevant extract is as follows : (SCC pp. 696-700, paras 9-10)

"9. The ingredients of Section 420 of the Penal Code are:

'(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.'

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See Ajay Mitra v. State of M.P. [Ajay Mitra v. State of M.P., (2003) 3 SCC 11 : 2003 SCC (Cri) 703])"

(emphasis supplied)

17. *Applying the above principles, the ingredients of Sections 415 and 420 are not made out in the present case. The grievance of the first respondent arises from the termination of his services at the Hospital. The allegations indicate that there was an improper billing in respect of the surgical services which were rendered by the complainant at the Hospital. At the most, the allegations allude to a breach of terms of the consultancy agreement by the appellant, which is essentially in the nature of a civil dispute.*

…

20. *In Anwar Chand Sab Nanadikar v. State of Karnataka [Anwar Chand Sab Nanadikar v. State of Karnataka, (2003) 10 SCC 521 : 2004 SCC (Cri) 929] a two-Judge Bench restated the essential ingredients of the offence of criminal breach of trust in the following words : (SCC p. 524, para 7)*

"7. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime."

21. *In Vijay Kumar Ghai v. State of W.B. [Vijay Kumar Ghai v. State of W.B., (2022) 7 SCC 124 : (2022) 2 SCC (Cri) 787] another two-Judge Bench held that entrustment of property is pivotal to constitute an offence under Section 405IPC. The relevant extract reads as follows : (SCC p. 140, para 28)*

"28. "Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code."

22. *None of the ingredients of the offence of criminal breach of trust have been demonstrated on the allegations in the complaint as they stand. The first respondent alleges that the appellant caused breach*

of trust by issuing grossly irregular bills, which adversely affected his professional fees. However, an alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment. No element of entrustment has been prima facie established based on the facts and circumstances of the present matter. Therefore, the ingredients of the offence of criminal breach of trust are ex facie not made out on the basis of the complaint as it stands.

23. *In the above view of the matter, there is a patent error on the part of the High Court in setting aside the judgment of the Additional Sessions Judge and by holding that cognizance was correctly taken of the offence punishable under Sections 405, 415 and 420IPC."*

10. In ***Vijay Kumar Ghai v. State of W.B.***[5]*, the Hon'ble Supreme Court held as follows:-*

"20. *This Court in R.P. Kapur v. State of Punjab [R.P. Kapur v. State of Punjab, (1960) 3 SCR 388 : AIR 1960 SC 866] summarised categories of cases where inherent power can and should be exercised to quash the proceedings:*

20.1. *Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction.*

20.2. *Where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged.*

20.3. *Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

21. *This Court in Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] observed : (SCC p. 11, para 27)*

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5 (2022) 7 SCC 124

"27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

23. *A two-Judge Bench of this Court in State of M.P. v. Awadh Kishore Gupta [State of M.P. v. Awadh Kishore Gupta, (2004) 1 SCC 691 : 2004 SCC (Cri) 353] made the following observation : (SCC p. 700, para 11)*

"11. … the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its

extraordinary jurisdiction of quashing the proceeding at any stage. … In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code."

24. *This Court in G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.*

25. *This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that : (Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , SCC p. 749, para 13)*

"13. … Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

…

37. *The following observation made by this Court in Uma Shankar Gopalika v. State of Bihar [Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336 : (2006) 2 SCC (Cri) 49] with almost similar facts and circumstances may be relevant to note at this stage : (SCC pp. 338-39, paras 6-7)*

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-BIPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. … It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-BIPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482CrPC which it has erroneously refused."

38. *There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of*

damages. However, as held by this Court in Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] , the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by Respondent 2 does not disclose dishonest or fraudulent intention of the appellants."

11. The petition of complaint related to a purchase order dated 18.12.2010 and purported non supply and/or part supply of materials ordered under the said purchase order. The petitioner evidently ceased to be a Director of the accused no. 1 company with effect from 17.01.2009, as depicted in the Form 32 submitted by the accused no.1 company with the Registrar of Companies on 20.9.2001. It is apparent that the petitioner had no role to play in the affairs of the accused no.1 company at the time of either placing the purchase order by the complainant/opposite party no.2 or subsequent purported non-performance of the terms of such purchase order by the accused no.1 company.

12. According to Section 190 of the Code of Criminal Procedure taking cognizance by the Learned Magistrate requires exercise of judicial mind. Taking of cognizance is not a mechanical process to be discharged without application of mind diligently and judiciously. Section 190(1)(a) of the Code of Criminal Procedure states that any Magistrate can proceed in a certain direction upon a petition of complaint of facts which constitute such offence.

13. The complaint reflected breach in terms of the supply order, which dispute is amenable for adjudication before a competent civil forum. In the absence of materials, which suggest existence of false and fraudulent representation and intention at the inception of the transaction, the charge under Section 420 of the Indian Penal Code cannot be sustained.

14. The complaint and the statement of the representative of the opposite party no.2 company did describe the individual act of deception on the part of the petitioner to justify his status as an accused in the instant case.

15. Section 406 of the Indian Penal Code provides punishment for the offence of criminal breach of trust. The main ingredients of the said Section are –

    (a) entrustment of property by the aggrieved to the accused; and

    (b) subsequent misappropriation of the said property by the accused.

    The instant case, disclosed existence of sale transaction between the accused no.1 and the opposite party no.2 company. Payments in respect of commercial transaction for supply of goods cannot be construed to be "entrustment" of money by the purchaser to the seller, within the meaning of section 415 of the Indian Penal Code.

16. Section120B of the Indian Penal Code provides punishment for the offence of criminal conspiracy. The ingredient with regard to such offence could not be inferred from the facts as disclosed in the petition of complaint and the statements on record.

17. The primary ingredients of the offence under section 406 of the Indian Penal Code are - (a) entrustment of property by the aggrieved to the accused; and (b) subsequent misappropriation of the said property by the accused.

The offence under Section 420 of the Indian Penal Code has its primary ingredients as-

a) false and fraudulent representations made by the accused to the aggrieved:

b) consequent delivery of valuable property by the aggrieved to the accused; and

c) subsequent misappropriation of the said valuable property by the accused.

Thus it is apparent that in case of the offence under Section 420 of the Indian Penal Code there must exist false and fraudulent representation by the accused to the aggrieved prior to delivery of the valuable property by the aggrieved to the accused. The transfer of property in respect of the offence under Section 420 of the Indian Penal Code is not voluntary but is a result of inducement. In case of an offence under Section 406 of the Indian Penal Code, the transfer of the valuable property from the possession of the aggrieved to the accused must be coupled with subsequent act of misappropriation for wrongful gain by the accused.

18. It was apparent from the petition of complaint that the accused no.1 has its office at Ghaziabad, in the State of Uttar Pradesh and the accused persons, including the petitioner, also resided in places which were beyond the

territorial jurisdiction of the Ld. Court below. The opposite party no.2 company also had its registered office at New Delhi and regional office at Jharkhand. All the aforesaid places lie outside the territorial jurisdiction of the Learned Metropolitan Magistrate, 8th Court, Calcutta. Section 202 of the Code of Criminal Procedure states that any Magistrate, on receipt of a complaint which has been made over to him under Section 192, shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. It is thus apparent that in cases where the accused resides outside the territorial jurisdiction of the Court of the Magistrate, the Learned Magistrate is required to either inquire himself or to direct investigation by a police officer or any other person deemed fit by the Magistrate. The said requirement of law needs to be respected and complied with care and caution and not to be treated as a mere empty formality. From a perusal of the orders passed by the Learned Magistrate, it is apparent that the Learned Magistrate recorded the statement of the complainant/opposite party no.2 under Section 200 of the Code of Criminal Procedure but thereafter did not take any further steps, as envisaged under Section 202 of the Code of Criminal Procedure. In view of the mandatory nature of the provisions of Section 202 of the Code of Criminal Procedure relating to issuance of process against persons residing

outside the jurisdiction of the Court of the Learned Inquiring Magistrate, it is apparent that the issuance of process by the Learned Magistrate through the order cannot be sustained.

19. The address of the petitioner revealed to be of H-304, Ajnara Landmark, Sector – IV, Vaishali, Ghaziabad, Uttar Pradesh, Pin – 201011.

20. An application filed under Section 200 Cr.P.C., 1973 before the Chief Metropolitan Magistrate, Kolkata did not mention the designation of the petitioner at Serial No.5 of the Cause Title to be arraigned as an accused.

21. The entire complaint did not mention any overt act or specific role of the present petitioner to have been involved in the alleged offence. The petitioner could not have been vicariously liable for the act of the accused company being ceased to be a part of the company having rendered his resignation vide Form – 32 issued under the provisions of the Companies Act, 1956 with effect from 17.01.2009 prior to the occurrence of the alleged incident. The said document to have been issued by the Registrar of Companies is unimpeachable in nature and can be relied upon at this stage. Moreover, the present petitioner was not a signatory to the agreement in question.

22. The Learned Magistrate erred in taking cognizance with regard to the present petitioner without following the provisions mandated under Section 202 of the Code of Criminal Procedure as well as the dearth of an iota of involvement and knowledge of the present petitioner in commission of offence alleged of.

23. The dispute primarily as apparent from the material on record is civil in nature which has been given a colour of criminality to frustrate and pressurize the petitioner.

24. The instant proceeding if allowed to continue will impede the interest of the petitioner who will have to suffer the rigmarole of trial and its constraints. The proceedings as far as the present petitioner is concerned is quashed accordingly.

25. In view of the above discussions, the proceedings being Case No. C-11974 of 2010 pending before the Court of the Learned 8th Metropolitan Magistrate, Kolkata under Sections 406/420/120B of the Indian Penal Code is quashed.

26. Under such circumstances, the instant criminal revisional application being CRR 2281 of 2011 is allowed.

27. Accordingly, CRR 2281 of 2011 stands disposed of.

28. There is no order as to costs.

29. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

30. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)