

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2285 of 2012

**Sri Abhijit Kapuria
-Vs-**

The State of West Bengal and Anr.

For the Petitioner : Mr. Sauradeep Dutta
(Amicus Curiae)

For the State : Ms. Sreyashee Biswas
Ms. Puja Goswami

Heard on : 04.03.2024, 16.04.2024, 20.08.2024

Judgment on : 07.11.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the judgment and order dated 21.12.2009 pending before the Learned Judicial Magistrate, 2nd Court, Burdwan in G.R. No.387 of 2004 arising out of Burdwan Police Station Case No.159 of 2004 dated 10.04.2004 under Section 420 of the Indian Penal Code.
2. Petitioner was the Marketing Director of Credence Info solution having it's office at 24, Mayur Mahal, P.O. – Burdwan, District – Burdwan. One Sumit Goswami, son of Dipak Goswami, claiming to be a permanent resident of

Chalirmath, Goswami Para, P.O.- Nabadwip, District – Nadia filed a complaint inter alia stating as follows:-

- a) He along with other employees were appointed as Marketing Executive of Credence Info Solution by Sri Abhijit Kapuria, the Marketing Director of Credence Info Solution at a monthly remuneration of Rs.7,000/- per month on 07.03.2004.
 - b) After working for more than one month in the organization he asked Mr. Kapuria for his salary and Mr. Kapuria issued an account payee cheque for a sum of Rs.7,000/- drawn on S.B.I., University Branch, Rajbati (Account Payee Cheque) not before 10th April, 2004.
 - c) On 10.04.2004 when he going to present the cheque for encashment Mr. Kapuria informed him that he did not have adequate fund in the account lying in the bank. He also came to know from other employees that similar incidents happened.
 - d) On suspicion on 10th April, 2004 the de facto complainant asked Mr. Kapuria to produce the relevant documents justifying his locus standi to act as a Marketing Director and also his authority to appoint persons as Marketing Executive.
 - e) Other employees had been working there but they did not get their remuneration.
3. The Burdwan Police Station after receipt of the above complaint registered a police case being no.159 of 2004 dated 10.04.2004 under Section 420 of the

Indian Penal Code corresponding to G.R. 387 of 2004 and started investigation.

4. The Learned Advocate representing the petitioner submitted that it appeared from the First Information Report that there was no prima facie case against the petitioner.
5. On 10th April, 2004 when the petitioner was going to present the same he was requested by the petitioner not to cash the said cheque on 10th April, 2004 as there was no sufficient fund in the account. The de facto came to know from the other colleagues that same incident happened in respect of them. The other colleagues did not make any complaint against the petitioner.
6. As the petitioner having bonafide intention requested the opposite party no.1, not to encash the cheque as there was no sufficient fund in the account of company.
7. The allegations made in the F.I.R., did not constitute a cognizable offence but constitute only non-cognizable offence no investigation was permitted by the police officer without the order of the Magistrate.
8. The opposite party no.1, maliciously instituted the proceeding with an ulterior motive for wreaking vengeance on the accused as the opposite party no.1, without giving time to the petitioner has instituted such proceeding maliciously with an ulterior motive.
9. Considered the submissions of the Learned Advocate representing the State.

10. The petitioner had appointed a number of employees as marketing executive at a remuneration of Rs.7,000/- per months in the capacity of marketing director of Credence Info Solution on 07.03.2004. Appointment letter to that effect was issued to two individual employees. On expiry of one month's employment, the complainant sought for his remuneration and accordingly a cheque of Rs.7,000/- drawn on SBI University Branch at Rajbati was issued in his favour. Later on the petitioner informed the de facto complainant about derth of money in his credit account in the aforesaid bank. Subsequently the complainant learnt from other colleagues of similar cheques being issued to them by the petitioner, who were thereafter asked by him not to encash the said cheques on 10.04.2004. Non-payment of salary amounts to the violation of terms and conditions of a contract of employment entered into by and between both the parties.
11. The ingredients to constitute the offence under Section 420 of the Indian Penal Code states as follows:-

Section 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.”

12. The ingredients to constitute the offence of Section 420 of the Indian Penal Code included inducement to lead or move someone to act in terms of

delivery of property, valuable securities as well as destruction of the property caused by way of cheating or inducement.

13. In the instant case, the de facto complainant rendered services in terms of an employment which cannot be termed as delivery of property or a valuable security or a destruction of the property to justify an offence under Section 420 of the Indian Penal Code.
14. The complainant willingly accepted the terms of the employment evident in the appointment letter on record. Any violation of the terms and conditions of the said appointment letter results in a violation of an agreement or a contract between both the parties and such dispute is necessarily civil in nature which does not fall within the ambit of the criminal courts to decide.
15. In view of the above discussions, the judgment and order dated 21.12.2009 pending before the Learned Judicial Magistrate, 2nd Court, Burdwan in G.R. No.387 of 2004 arising out of Burdwan Police Station Case No.159 of 2004 dated 10.04.2004 under Section 420 of the Indian Penal Code is quashed.
16. Under such circumstances, the instant criminal revisional application being CRR 2285 of 2012 is allowed.
17. Accordingly, CRR 2285 of 2012 is disposed of.
18. There is no order as to costs.
19. Case Diary, if any, be returned forthwith.
20. I record my appreciation for the able assistance rendered by Mr. Sauradeep Dutta, Learned Advocate as Amicus Curiae in disposing of the instant criminal revisional application.

21. 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.
22. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)