IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2401 of 2018

Prem Chand Jain @ P. C. Jain & Another
Versus
The State of West Bengal & Another

For the Petitioners	: Mr. Ayan Bhattacharjee, Adv. Mr. Indrajit Adhikari, Adv. Mr. Arpit Choudhury, Adv. Mr. Suman Majumder, Adv.
For the Opposite Party No. 2	: Mr. Sumanta Chakraborty, Adv. Mr. Bikramjit Mondal, Adv.
For the State	: Mr. Debasish Roy, Ld. P.P. Mr. Koushik Kundu, Adv. Mr. Saptarshi Chakraborty, Adv.
Heard on	: 23.09.2024
Judgment on	: 05.11.2024

Ajay Kumar Gupta, J:

1. By filing this Criminal revisional application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), the petitioners being the accused persons have prayed for quashing of the proceeding being G.R. (S) No. 827 of 2018 arising out of Section G (Hare Street Police Station) Case No. 163 dated 21st June, 2018 under Sections 120B/406/420 of the Indian Penal Code, 1860 pending before the Court of the Learned Chief Metropolitan Magistrate at Calcutta.

2. The brief facts, leading to filing of this instant Criminal Revisional application, are as under:

2a. On 13th June, 2018, the opposite party no. 2 herein filed a complaint under Section 156 (3) of the Code of Criminal Procedure, 1973 before the Learned Chief Metropolitan Magistrate against M/s Jainex Metalics Ltd. and the petitioners herein on the allegation to the effect that the accused persons entered into a criminal conspiracy and induced the opposite party no. 2 to supply goods (MS Scrap) valued at Rs. 21,50,661/= on credit. The opposite party supply the goods as per purchase orders but they did not repay the amount of goods sold and, thus, committed offence punishable under Sections 120B/406/420 of the Indian Penal Code, 1860.

2b. The Learned Chief Metropolitan Magistrate was pleased to allow the prayer of the opposite party no. 2 and directed the Officer-in-Charge, Hare Street Police Station to register an FIR against the company and Petitioners herein for investigation. Accordingly, a case has been initiated against the company and the Petitioners after registering an FIR being Hare Street Police Station Case No. 163 dated 21.06.2018 under Sections 120B/406/420 of the Indian Penal Code, 1860.

2c. On the contrary, the Petitioners/accused persons denied the allegations made by the opposite party no. 2 and further contended that the Petitioners are innocent and are in no way connected with any offence as alleged.

2d. M/s Jainex Metalics Ltd., a company incorporated under the provisions of the Companies Act, 2013 and duly registered under the provisions of the Companies Act, 1956. Whatever transactions made by and between the parties herein was a commercial transaction only. Any breach of terms and conditions would create civil liability. The relief would be available in different forums. Despite knowing the said facts, the opposite party, with ill motive, tried to convert civil disputes into criminal complaints though the present petitioners or their company is not at all involved in the alleged offence punishable under Sections 120B /420/406 of the IPC.

2e. Opposite party no. 2 initiated the instant proceeding in order to enforce a time barred claim though knowing that the dispute is purely civil dispute, it became non enforceable by efflux of time. In spite of the said facts, the Learned Metropolitan Magistrate failed to appreciate any prima facie case or complicity of the present petitioners in the alleged offence as complained of and pass a direction under Section 156 (3) of the Code of Criminal Procedure, 1973 is bad in law. Learned Magistrate further overlooked and ignored that the complainant has tried to convert criminal offence in place of civil wrong, which is a sheer abuse of process of law. It requires to be quashed otherwise the petitioners would suffer irreparable loss and highly prejudice.

Under the above facts and circumstances, the instant Criminal Revisional application has come up before this Bench for its disposal.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel appearing on behalf of the petitioners submitted that whatever transactions had been made between the petitioners' company and the opposite party are commercial transactions and it is admitted facts that out of such transaction, some payment has been made by the company. If any dues are lying with the petitioners' company, may be recovered by filing a civil suit and not by way of criminal complaint. The opposite party, with ill motive, attempted to convert alleged breach of contractual obligations and/or civil disputes into criminal complaints, despite several warnings issued by the Hon'ble Apex Court and other Hon'ble High Courts against criminalising civil disputes, explaining the difference between breaches of contractual obligations, criminal breach of trust and cheating. The petitioners never committed any offence as alleged by the complainant. The petitioners pray for quashing of the instant proceeding being G.R. (S) No. 827 of 2018 arising out of Section G (Hare Street Police Station) Case No. 163 dated 21st June, 2018 under Sections 120B/406/420 of the Indian Penal Code, 1860.

Learned advocate representing the Petitioners has referred the following judgments to bolster his submissions: -

i. Satishchandra Ratanlal Shah Vs. State of Gujarat and Another[1];

ii. Delhi Race Club (1940) Ltd. and Others Vs. State of Uttar Pradesh and Another[2];

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[1] **(2019) 9 Supreme Court Cases 148;**
[2] **2024 SCC OnLine SC 2248;**

iii. Lalit Chaturvedi and Others Vs. State of Uttar Pradesh and Another[3];

iv. K.S. Oils Limited Vs. Srei Infrastructure Finance Limited[4];

v. Hotline Teletubes and Components Ltd. and Others Vs. State of Bihar and Another[5];

vi. Gannon Dunkerley & Company Limited and Others Vs. Chhatishgarh Impex Private Limited[6];

vii. Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others[7].

<u>SUBMISSION ON BEHALF OF THE OPPOSITE PARTY No. 2:</u>

4. Per contra, learned counsel representing the opposite party no. 2 vehemently argued and submitted that the accused persons or their company have never denied about the purchased orders and/or receiving the goods as supplied by the opposite party no. 2. It is also not denied by the petitioners that there are dues. Actually, after delivery of goods, the accused persons, just in order to create confidence upon the complainant company, made initial payment of

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[3] **2024 SCC OnLine SC 171;**
[4] **2016 SCC OnLine Cal 567 : (2016) 4 CHN 259;**
[5] **(2005) 10 Supreme Court Cases 261;**
[6] **2024 SCC OnLine Cal 7092;**
[7] **(2015) 6 Supreme Court Cases 287.**

Rs. 4,50,000/= to the complainant towards supply of goods. On such payment, opposite party no. 2 gained confidence by initial payment and representations of the accused and thereby induced to supply goods. Opposite party no. 2 supplies the goods amount to Rs. 21,50,661/= (Rupees Twenty-One Lakhs Fifty Thousand and Six Hundred Sixty-One) only but after receiving the said goods, accused started avoiding to make payment on different pretext one after another and also misbehaving with the representative of the opposite party no. 2 and further threatened him not to come their office place or elsewhere otherwise, he will face serious consequences. The said amount is still due and payable by the accused to the complainant.

4a. It is further submitted that the accused persons, in collusion and conspiracy among themselves, have misappropriated the said goods for their personal wrongful gain and monetary benefit. Thus, the accused persons induced the complainant to part with the goods and trusted upon the accused no. 1/company, the complainant had supplied the goods as per their purchase orders. However, they did not pay the due amount thereby causing wrongful loss to the complainant. As such, they had wrongful intention from the beginning to cheat and had deceived the complainant. As such, they have committed offence punishable under Sections 120B/406/420 of IPC. After being satisfied with the allegations made by the complainant, the Learned Trial Court has pleased to pass direction under Section 156 (3) of the Code of Criminal Procedure, 1973. Accordingly, the instant Criminal Revisional application has no merits and is liable to be dismissed at the threshold.

4b. It is further submitted that it is settled that save and except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. Although, the allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction under Section 482 of the CrPC, the Courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredient of the offences alleged against the accused.

4c. It is further submitted that while exercising inherent power under Section 482 of the CrPC, the Court may quash the proceedings to prevent abuse of the process of law or otherwise to secure the ends of justice but, at the same time, the Court may also not embark upon the appreciation of evidence at initial stage of proceedings. It is required to consider the materials on record as a whole.

Learned advocate representing the opposite party no. 2 has referred the following judgments to bolster his aforesaid contentions:

i. Mahesh Chaudhary Vs. State of Rajasthan and Another[8];

ii. Monoranjan Roy Vs. State of West Bengal and Another[9];

iii. Kamal Shivaji Pokarnekar Vs. State of Maharashtra and Others[10];

iv. Ashu Sen Alias Ashutosh Sen Gupta and Another Vs. State of West Bengal[11];

v. Devendra and Others Vs. State of Uttar Pradesh and Another[12];

vi. Hridaya Ranjan Prasad Verma and Others Vs. State of Bihar and Another[13];

vii. Rajesh Bajaj Vs. State NCT of Delhi and Others[14];

viii. Iridium India Telecom Limited Vs. Motorola Incorporated and Others[15];

ix. Emperor Vs. John Mciver[16];

[8] (2009) 4 Supreme Court Cases 439 : (2009) 2 Supreme Court Cases (Cri) 332 : 2009 SCC OnLine SC 497;
[9] 2023 SCC OnLine Cal 2559;
[10] (2019) 14 Supreme Court Cases 350 : (2019) 4 Supreme Court Cases (Cri) 846 : 2019 SCC OnLine SC 182;
[11] (1953) 2 SCC 569 : 1953 SCC OnLine SC 98;
[12] (2009) 7 Supreme Court Cases 495 : (2009) 3 Supreme Court Cases (Civ) 190 : (2009) 3 Supreme Court Cases (Cri) 461 : 2009 SCC OnLine SC 1066;
[13] (2000) 4 Supreme Court Cases 168 : 2000 Supreme Court Cases (Cri) 786 : 2000 SCC OnLine SC 636;
[14] (1999) 3 Supreme Court Cases 259 : 1999 Supreme Court Cases (Cri) 401 : 1999 SCC OnLine SC 277;
[15] (2011) 1 Supreme Court Cases 74 : (2010) 3 Supreme Court Cases (Cri) 1201 : 2010 SCC OnLine SC 1185;
[16] AIR 1936 MAD 353;

x. Bashirbhai Mohamedbhai Vs. The State of Bombay[17];

xi. Bakhshish Singh Dhaliwal Vs. The State of Punjab[18];

xii. Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Ors.[19].

<u>SUBMISSION ON BEHALF OF THE STATE</u>:

5. Learned counsel representing the State also supported the contention of the opposite party no. 2 and further submitted that in pursuant to the direction passed by the Learned Magistrate an FIR was lodged against the company and the Petitioners herein. During investigation, Investigating Officer of this case examined witnesses and recorded their statements under Section 161 of the CrPC. The Investigating Officer also served notice under Section 41 (A) of the CrPC to the accused. They appeared but, on being asked about the allegation against both the Petitioners in the light of the instant case, they failed to negate the allegation made against them either by oral or documentary evidence. During investigation, it reveals that the accused/Petitioners herein with dishonest intention placed purchase orders to the complainant and later on they were taking time for repayment on several pretexts and ultimately refused to pay the

[17] 1960 AIR 979 : AIR 1960 Supreme Court 979;
[18] 1967 AIR 752 : AIR 1967 Supreme Court 752;
[19] AIR 2009 Supreme Court 9 : 2008 AIR SCW 6848.

same. Therefore, they are liable for committing the offences as alleged. Accordingly, the Criminal Revisional application is liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Heard the rival contention and submissions of all the parties and on perusal of the record, this Court finds in the instant Revisional Application, Petitioners have prayed for quashing of the proceeding of G.R. (S) No. 827 of 2018 arising out of Section G (Hare Street Police Station) Case No. 163 dated 21st June, 2018 under Sections 120B/406/420 of the Indian Penal Code, 1860 pending before the Court of the Learned Chief Metropolitan Magistrate at Calcutta on the following grounds:

Firstly, the opposite party no. 2 illegally made a complaint before the Learned Chief Metropolitan Magistrate against the Petitioners in order to enforce a time barred civil debt. No steps have been taken for enforcement of the agreement for a period of five years and tried to convert civil dispute into criminal case, which is not permissible in law and the same is sheer abuse of process of law.

Secondly, no sufficient ingredients have been disclosed by the opposite party no. 2 in his complaint with regard to alleged offences punishable under Sections 120B/406/420 of the Indian Penal Code, 1860 albeit the Learned Magistrate overlooked and ignored and directed the Officer-in-Charge, Hare Street Police Station to treat the complaint as an FIR. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction. Mere use of the expressions like 'cheating', 'deception' and 'inducement' are of no consequences when it is an admitted fact that the FIR discloses that initially payment had been made by the Petitioners upon supply of goods.

Thirdly, the Learned Chief Metropolitan Magistrate has failed to appreciate in the instant case, the provision of Sections 154 (1) and 154(3) of the CrPC. Those sections have not been complied with, which is a pre-condition for consideration of a prayer under Section 156(3) of the CrPC.

Fourthly, due to the financial loss in the business, the company was referred to Board for Industrial and Financial Reconstruction (in short 'Board') with effect from February 10, 2016 being Case No. 28 of 2016 under Section 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985. As per decision of the Board, the Company was restrained from disposing or alienating in any manner of its fixed assets without the consent of the Board. Subsequently, physical possession of M/s Jainex Metalics Ltd. was taken by the Bank on January 31, 2016 and against such illegal possession by the Bank, M/s Jainex Metalics Ltd. had filed a case against the Bank, which is now pending before the Debts Recovery Tribunal - I as such the Petitioners had an intention to pay the balance dues amount.

7. Now, question arises whether order or direction passed by the Learned Chief Metropolitan Magistrate to treat the complaint filed under Section 156(3) of the CrPC as an FIR was perverse, incorrect or illegal or proceeding which is an abuse of process of law?

8. It is admitted fact that the Petitioners or their Company have not denied about their purchased orders and/or receiving the goods as supplied by the opposite party no. 2. It is also not denied by the petitioners that there are no dues. Non-payment of dues in a commercial transaction or their activities prior to placing purchase orders for supply of goods would not constitute offence punishable under Sections 120B/406/420 of the Indian Penal Code, 1860 unless at the very inception there was any intention of the petitioners to cheat, which is a condition precedent for an offence under Section 420 of the Indian Penal Code, 1860. Furthermore, there is nothing in the complaint to show that the petitioners had dishonest and fraudulent intention at the time, when the opposite party had supplied the goods.

9. Upon perusal of Judgments referred by the petitioners, it reveals the Hon'ble Supreme Court in a case of ***Satishchandra Ratanlal Shah v. State of Gujarat*** has held, inter alia, as under:

> *"that the mere inability of the accused/appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.*
>
> *Moreover, the Supreme Court in a number of cases has usually cautioned against criminalising civil disputes, such as breach of contractual obligations. The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 Indian Penal Code and finally allowed the application filed under Section 482 of the CrPC and the proceedings initiated based on the FIR instituted at the instance of the complainant have been quashed".*

10. The Hon'ble Supreme Court in a case of ***Delhi Race Club (1940) Ltd. v. State of U.P.*** has further held, inter alia, in Paragraphs No. 24 to 26, 28 and 29 as follows: -

"<u>DIFFERENCE BETWEEN CRIMINAL BREACH OF TRUST AND CHEATING</u>

*24. This Court in its decision in **S.W. Palanitkar & Ors. v. State of Bihar & Anr.** reported in **(2002) 1 SCC 241** expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*

> *"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.*
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> *10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."*

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

<u>In order to constitute a criminal breach of trust (Section 406 IPC):</u> -

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: -

> *a) dishonestly misappropriated or converted property to his own use, or*
>
> *b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:*
>
> > *i. any direction of law prescribing the method in which the trust is discharged; or*
> >
> > *ii. legal contract touching the discharge of trust (see: S.W.P. Palanitkar (supra).*

<u>Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -</u>

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) CrI.L.J. 3462 (SC))

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27……….

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in ***(1973) 2 SCC 823*** *as under:*

> *"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the*

respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case."

And finally, the Hon'ble Supreme Court concluded in paragraphs 41 to 44 as follows: -

"FINAL CONCLUSION

41. Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Indian Penal Code (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("BNS") in December 2023 which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.

42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police – to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it *has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.*

43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other.

44. In view of the aforesaid, the appeal succeeds and is hereby allowed."

11. The Hon'ble Supreme Court in a case of ***Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another*** has further held inter alia in Paragraphs No. 8 to 10 as follows: -

*"**8.** Having gone through the complaint, which was registered as an FIR and the assertions made therein, it is quite clear that respondent no. 2/complainant – Sanjay Garg's grievance is regarding failure of the appellants to pay the outstanding amount, in spite of the respondent no. 2/complainant – Sanjay Garg's repeated demands. The respondent no. 2/complainant – Sanjay Garg states that the supplies*

were made between the period 01.12.2015 and 06.08.2017. The appellants had made the payments from time to time of Rs. 3,76,40,553/- leaving a balance of Rs. 1,92,91,358/-.

9. *We will assume that the assertions made in the complaint are correct, but even then, a criminal offence under Section 420 read with Section 415 of the IPC is not established in the absence of deception by making false and misleading representation, dishonest concealment or any other act or omission, or inducement of the complainant to deliver any property at the time of the contract(s) being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averments. A prayer is made to the police for recovery of money from the appellants. The police is to investigate the allegations which discloses a criminal act. Police does not have the power and authority to recover money or act as a civil court for recovery of money.*

10. *The charge sheet 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. 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."*

12. The Hon'ble High Court at Calcutta in a case of ***K.S. Oils Limited v. Srei Infrastructure Finance Limited*** has held inter alia in Paragraphs No. 17 to 19 as follows:

*"**17.** This is a case where the allegation is made that the petitioner company cheated the complainant company and as such the petitioner company is liable to be prosecuted for the offence punishable under Section 420 of the Penal Code, 1860. The main thrust of argument on behalf of the petitioner company is that the transaction between the petitioner company and the complainant company is mere breach of contract and no offence of cheating is made out from the averments made in the petition of complaint. In "Hriday Ranjan Prasad Verma v. State of Bihar" reported in 2000 SCC (Cri) 786, the Supreme Court*

has distinguished between mere breach of contract and the offence of cheating. It is held by the Supreme Court in this report that the distinction between the 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 the 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, i.e. the time when the offence is said to have been committed. 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, i.e. when he made the promise, cannot be presumed.

18. *In the instant case, the intention of the petitioner company to deceive the complainant company at the commencement of the transaction can not be inferred from the subsequent conduct of the petitioner company. The development of the facts subsequent to disbursement of loan cannot be construed to infer that the petitioner company had the fraudulent or dishonest intention right from the beginning of the transaction, when the petitioner company has repaid some amount of loan. I have already observed that the petitioner company has repaid Rs. 11,19,14,718* *during the period from September 14, 2010 to July 29, 2011 in favour of the complainant company and as such, I cannot persuade myself to hold that the petitioner company had the intention to deceive the complainant company from the very commencement of the transaction. Moreover, the complainant company has already initiated criminal proceeding against the petitioner company under Section 138 of the Negotiable Instrument Act for dishonour of cheque of Rs. 100,25,20,548 and the said criminal proceeding being Complaint Case No. C-2344 of 2011 is pending before the court of learned Metropolitan Magistrate, 12th Court, Calcutta for adjudication. The upshot of my entire above observation is that the transaction between the petitioner company and the complainant company is mere breach of contract.*

19. *On consideration of the averments made in the petition of complaint, I cannot persuade myself to hold that the contents of the petition of complaint disclose any offence punishable under Section 406, 471, 120B of the Penal Code, 1860. In view of the reasons disclosed by me hereinabove, I have no hesitation to hold that the complainant company has failed to make out a case to prosecute the petitioner company for an offence punishable under Section 420 of the Penal Code, 1860. By applying the test laid down by the Supreme Court in "State of Haryana v. Bhajajlal" (supra), I am inclined to quash the criminal proceeding initiated by the complainant company against the petitioner company and other co-accused persons."*

13. The Hon'ble Supreme Court in a case of ***Hotline Teletubes and Components Ltd and Others v. State of Bihar and Another*** has held in Paragraph No. 2 as follows:

> *"2. This appeal by special leave has been filed by the appellants against the order passed by the Patna High Court, refusing to quash their prosecution under Ss. 406 and 420 of the Indian Penal Code (for short "IPC"). In the complaint petition, it has been alleged that the complainant supplied goods to the accused persons, but they failed to pay the price therefor. There is no whisper in the complaint that at the very inception of the contract between the parties, there was any intention to cheat. It appears from a bare perusal of the complaint that it is a case of purely civil liability and no criminal offence is disclosed, much less offences either u/s. 406 or 420 of the Indian Penal Code. So far as the High Court is concerned, it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In our view, allowing such prosecution to continue would amount to an abuse of the process of court and to prevent the same, it would be just and expedient to quash the same."*

14. The Hon'ble High Court at Calcutta in a case of ***Gannon Dunkerley & Co. Ltd. Vs. Chhatishgarh Impex (P) Ltd.*** has held, inter alia, in Paragraph Nos. 10 to 13 as follows:

> *"10. In the present case, it has nowhere been stated 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. Furthermore, there is nothing in the complaint to show that the petitioners had dishonest and fraudulent intention at the time, when the opposite party had supplied the MS gates. It is further admitted facts that there was a business terms between the parties. The petitioners had paid part payment out of the outstanding dues amount promptly. Dispute arises between the parties when the petitioner failed to pay the outstanding dues amount of Rs. 22, 32,041/- and the said non-payment was owing to supply of MS Gates by the opposite party. Those disputes are apparently civil in nature and that could be decided in Civil Court. No other prima facie ingredients made out by the opposite party in a Court complaint case regarding offences as alleged.*
>
> *11. This Court also relies on several Judgments of the Hon'ble Apex Court. These are taken up herein below :*

The Hon'ble Supreme Court in ***<u>The State of Kerala v. A. Pareed Pillai and Anr</u>.***[20] *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 fulfill 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 agreement took place to supply MS gates. It is not disputed by the petitioners that there was no outstanding dues of Rs. 22, 32,041/-. Those transactions, by no stretch of imagination, can be called dishonest inducements. It was purely business transactions of a civil nature. Simply because of the amounts have not been paid or are outstanding will not make it a case of wilful or dishonest inducement or deception.

Similary, in ***<u>Haridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr</u>***.[21] *like in the present case, the Hon'ble Apex Court held that:-*

"There was no allegation in the complaint indicating, expressly or impliedly, any intentional

[20] **1972 Cri.L.J.1243**
[21] **(2000) 4 Supreme Court Cases 168**

deception on the part of the appellants right from the beginning of the transaction. The Hon'ble Apex Court drew distinction between cheating from mere breach of contract. According to the Hon'ble Apex Court, definition of cheating contemplates two separate classes of acts namely deception by fraudulent or dishonest inducement and deception by intention. Deception by fraudulent or dishonest inducement must be shown to exist right from the beginning of the transaction".

It is not the case of the opposite party in the present case that he was deceived by fraudulent or dishonest inducement from the beginning of the transaction rather admits petitioners had made part payment.

12. Upon perusal of copy of complaint it shows that there was no fraudulent or dishonest inducement or deception by intentional practiced by the petitioners right from the beginning of the transaction. 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 of the transaction. Therefore, the case under Sections 406/420/120B of IPC in the facts of this case has not been made out. The petitioners were not deceived nor induced to enter into the business transaction. That is not his case in the complaint nor there was any inducement dishonestly or fraudulently made to *deliver the MS gates. They entered into a business transaction. The breach of contract or business transaction cannot be called cheating in the facts of this case.*

Similar view was also expressed in the case of ***Hari Prasad Chamaria v. Bishun Kumar Surekha and Ors***[22]*, the Hon'ble Apex Court was dealing with a case of quashing of FIR under Section 420 IPC where the appellant had entered into a business transaction and in good faith paid large amount to respondents for starting the business. Respondents neither started the business in their own names and refused to render accounts nor were money refunded by that appellant. The question before the Hon'ble Apex Court arose whether in such circumstances respondents could be held criminally liable under Section 420 IPC. While negating the plea of the appellant, the Hon'ble Apex Court observed that even assuming prima facie all the allegations in the complaint to be true they merely amount to a breach of contract and could not give rise to criminal prosecution.*

13. In the light of above observations together with averments contained in the Court complaint, this Court finds ingredient of the offences alleged by the

[22] **(1973) 2 SCC 823**

> *opposite party are missing. Merely because payment has not been made or accounts have not been settled, it does not constitute offences punishable under 406/420/120B of the Indian Penal Code. 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 otherwise it would be an abuse of process of law."*

15. The Hon'ble Supreme Court in a case of ***Priyanka Srivastava and Others v. State of Uttar Pradesh and Others*** has held in Paragraph No. 31 as follows with regard to prior compliance of Sections 154 (1) and 154 (3) of the CrPC before filing complaint under Section 156 (3) of the CrPC**:**

> *"**31.** We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate*

> *under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."*

16. In the present case in hand, it has nowhere been stated that at the very inception there was any ulterior or dishonest or fraudulent intention of the petitioners to cheat, which is a condition precedent for an offence under Section 420 of the Indian Penal Code. Furthermore, there is nothing in the complaint to show that the petitioners had dishonest and fraudulent intention at the time, when the opposite party had supplied the goods. It is further admitted facts that there was a business terms between the parties. The petitioners had initially paid a sum of Rs.4,50,000/= for goods supplied. The complainant had supplied goods (MS Scrap) on different dates from 03.11.2014 to 30.11.2014. Dispute arises between the parties when the petitioner failed to pay the subsequent outstanding dues amount of Rs. 21,50,661/- and the said non-payment was for supply of goods by the opposite party No.2. Those disputes are apparently civil in nature and that could be decided in competent Civil Court or another forum. No other prima facie ingredients made out by the opposite party in a Court complaint case regarding offences as alleged for cheating or criminal breach of trust. The Hon'ble Supreme Court has clarified the above position in the aforesaid judgments.

17. There is nothing to show that the petitioners had dishonest or fraudulent intention at the time when agreement took place to supply the goods (MS Scrap). It is not disputed by the petitioners that there are no outstanding dues of Rs. 21,50,661/-. Those transactions, by no stretch of imagination, can be called Dishonest Inducements. It was purely business transactions of a civil nature. Simply because of the amounts have not been paid or are outstanding dues will not make it a case of willful or dishonest inducement or deception. It is not the case of the Opposite Party No.2 in the present case that he was deceived by fraudulent or dishonest inducement from the beginning of the transaction rather admits petitioners had made initial payment and it is admitted facts.

18. Upon perusal of copy of complaint, it shows that there was no fraudulent or dishonest inducement or deception by intentional practiced by the petitioners right from the beginning of the transaction. If subsequent payment has not been made, then it will neither tantamount to deception, fraudulent or dishonest inducement nor would it amount to deception by intentional means right from the beginning of the transaction. Therefore, the case under Sections 406/420/120B of IPC in the facts of this case has not been made out. The petitioners were not deceived nor induced to enter into the business transaction. That is not his case in the complaint nor there was any inducement dishonestly or fraudulently made to deliver the MS Scrap. They simply entered into a business transaction. The breach of contract or business transaction cannot be called cheating in the present facts of this case.

19. It is quite clear from the complaint that the opposite party no. 2/complainant alleged that in spite of repeated demands, the accused did not pay the outstanding dues and also start avoiding to make payment of one pretext after another and start misbehaving with the representative of the opposite party no. 2 and further threatened him not to come to their office place or elsewhere otherwise he has to face serious consequences. For the purpose of committing offence of cheating, dishonest or fraudulent 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 the present case entrustment is missing, in fact it is not even alleged by the Opposite Party No. 2. It is purely a case of Sale of Goods. Furthermore, no details and particulars are given, when and on which date and place the threats were given. Without details and particulars, it is not possible to come to conclusion that there were threats etc. which have been made only to turn the civil disputes into a criminal case. From the documents filed by the Petitioners, it reveals the company was running in loss and for that reason it was referred to Board for Industrial and Financial Reconstruction (in Short 'Board') with effect from February 10, 2016 being Case no.28 of 2016 under Section 15(1) of Sick Industrial companies (Special Provisions) Act,1985 and as per decision of the Board the company was restrained from disposing or alienating in any manner any its fixed assets without the consent of the Board. Subsequently physical possession of the M/S Jainex was taken by the Bank on January 31, 2016 and against such illegal possession by the Bank, M/S Jainex had filed a case against the Bank, which is now pending before the Debts recovery Tribunal-I as such non- payment of outstanding dues may be due to different reason.

20. In the light of the above observations together with averments contained in the Court complaint, this Court finds ingredient of the offences alleged by the Opposite Party No. 2 are totally missing. Merely because payment has not been made or accounts have not been settled, it does not constitute offences punishable under Sections 406/420/120B of the Indian Penal Code, 1860. 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 otherwise it would be a sheer abuse of process of law.

21. Any of the judgments referred by the opposite party no. 2 are not at all applicable in the present facts and circumstances of the case because in the present case, essential ingredients of the alleged offences are missing and nature of disputes appears civil in nature.

22. Accordingly, the proceeding being G.R. (S) No. 827 of 2018 arising out of Section G (Hare Street Police Station) Case No. 163 dated 21st June, 2018 under Sections 120B/406/420 of the Indian Penal Code, 1860 pending before the Court of the Learned Chief Metropolitan Magistrate at Calcutta against the petitioners herein stand quashed.

23. Consequentially, **CRR 2401 of 2018** is, thus, **allowed.** Connected applications, if any, are also, thus, disposed of.

24. Case Diary, if any, is to be returned to the learned Advocate for the State.

25. Let a copy of this judgment and order be sent to the learned Court below for information and taking necessary action.

26. Interim order, if any, stands vacated.

27. Parties will act on the server copies of this order uploaded on the official website of this Court.

28. 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.)