

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 917 OF 2022

ANIRUDDHA BANERJEE & ORS.
VS.
THE STATE OF WEST BENGAL & ANR.

WITH

CRR 2332 OF 2021

PEPSI CO INDIA HOLDINGS PVT LTD
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Rajesh Batra,
Ms. Sonia Kukreja,
Mr. Sakabda Roy.

For the State : None.

For the Opposite Party No. 2 : None.

Hearing concluded on : 02.12.2024

Judgment on : 18.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the complaint bearing CR No.0053412/2015 (registered as CN/706/2015) dated 17.12.2015, pending before the Court of Metropolitan Magistrate, 19th Court, Calcutta under Sections 406/420/120B of the Indian Penal Code, 1860. The petitioners herein are ex-employees of the company, M/s. PepsiCo India Holdings Private Limited having its registered office at Level 3, Pioneer Square, Sector 62, Gurugram, Haryana – 122 101 (for short, “the company”) which is incorporated under the Companies Act, 1956 inter alia is engaged in manufacture and marketing of the food articles and sale of concentrates for beverages, throughout the country.
2. The facts of the case in a nutshell is that the opposite party no.2 herein being the sole proprietor of M/s. Nisha Enterprises of 46, Joy Mitra Street, Kolkata – 700 005 entered into an agreement on 26.02.2001, with the accused company for marketing and distribution of the products manufactured by the said company. In pursuance of the terms of the said agreement, the opposite party no.2 had started the business and purchased products from the company from time to time and made payments.
3. **It has been alleged that on 31.08.2003, the supply of goods to the opposite party no.2 were stopped by the company**

without serving any prior notice for termination of the distributorship agreement. The opposite party no.2 in his complaint has admitted that he had forwarded letters dated 11.08.2003 and 10.09.2003 to the company, requesting to recall the unsold stock and to clear the dues amounting to Rs.33,00,000/-(rupees thirty three lakhs only) and the company had assured the opposite party no.2 of the same.

4. An application under Section 156(3) of the Code of Criminal Procedure was filed by the opposite party no.2 for offence punishable under Sections 420/406/120B against four employees of the company. On the direction of the Court, Battala police station case no.197 of 2004 was registered against the accused persons on treating the application as an FIR.
5. On completion of investigation **the case ended in an FRT**, i.e., final report and the same was accepted by the learned Magistrate.
6. Being aggrieved, the opposite party no.2 filed a 'Narazi' petition against the said final report praying for further investigation and vide order dated 12.12.2008, the learned Magistrate directed **further investigation. Again the case ended in a final report being No.28 of 2010** dated 28.02.2010 on the **finding that the dispute is civil in nature.**

7. The opposite party being aggrieved by the said final report filed **another application for further investigation** but as the said application was not moved, the learned Magistrate accepted the final report vide order dated 21.05.2012. The opposite party then preferred a revisional application before the learned Chief Judge, City Sessions Court against the said order dated 21.05.2012 of the learned ACMM.
8. The learned Additional District and Sessions Judge, 1st Fast Track Court, Calcutta disposed of the revisional application with liberty to the complainant / opposite party herein to file a fresh complaint before the learned ACMM, Calcutta for proving the case by adducing sufficient evidence. Pursuant to the said liberty the proceedings in the present complaint case was initiated.
9. The private opposite party in spite of due service has failed to contest the present case, though the State has placed the case diary.
10. Admittedly the dispute between the parties arises out of an **agreement** with the company. It appears from the petition of complaint filed before the learned ACMM, Calcutta, that the opposite party herein carries on business in the style of M/s. Nisha Enterprises and he is the sole proprietor of the company having a business of distributorship and is a stockiest of M/s.

Hindustan Lever Limited and Pepsi Co India Holdings Pvt. Ltd.

The petitioners herein are the company and the office bearers of the company Pepsi Co India Holdings Pvt. Ltd.

11. A copy of the distributorship agreement is at page 69 of the revisional application being annexure 'C'. All the terms and conditions of the said business transaction have been clearly laid down in the distributorship agreement.
12. The Hon'ble Supreme Court in ***Lalit Chaturvedi vs. State of U.P, Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of 2023)***:

"5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.

6. In "Mohammed Ibrahim v. State of Bihar", 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)."

7. *Similar elucidation by this Court in "V.Y. Jose v. State of Gujarat", 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”, “Indian Oil Corporation v. NEPC India Ltd.”, “Vir Prakash Sharma v. Anil Kumar Agarwal” and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain”.

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.

11. It is for the respondent no. 2/complainant – Sanjay Garg to file a civil suit. Initiation of the criminal process for oblique purposes, is bad in law and amounts to abuse of process of law.”

13. CRR 917 of 2022 along with CRR 2332 of 2021 are thus allowed.

14. The proceeding being complaint bearing CR No.0053412/2015 (registered as CN/706/2015) dated 17.12.2015, pending before the Court of Metropolitan Magistrate, 19th Court, Calcutta under Sections 406/420/120B of the Indian Penal Code, 1860, **is**

hereby quashed in respect of the petitioners namely Aniruddha Banerjee, Sumanta Mitra, Rathin Chakraborty and Pepsi Co India Holdings Private Limited.

- 15.** All connected application, if any, stands disposed of.
- 16.** Interim order, if any, stands vacated.
- 17.** Let a copy of the Judgment be sent to the learned trial court at once.
- 18.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]