

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3161 of 2023

With

CRAN 2 of 2024

Sailen Biswas & another

-Vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Md. N. Rahber,
Mr. Muhammad Jawwad.

For the Opposite Party No. 2 : Mr. D. Banerjee,
Mr. Anik Dey.

For the State : None.

Hearing concluded on : 06.12.2024

Judgment on : 23.12.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for Quashing of the proceedings being complaint case no.118 of 2023, alleging the commission of offences punishable under Sections 323/379/420/406/506/34 of the Indian Penal Code, 1860, pending before the court of the learned Judicial Magistrate, 2nd Court, Barrackpore, North 24 Parganas.

2. The petition of complaint filed before the trial Court on the basis of which the proceeding has been initiated shows that the complainant has registered the present case against the petitioners on the allegation that:

“.....The father of the complainant namely Krishna Kumar Biswas purchased a plot of land measuring about 02 Cottah or 330 Satak or 1440 square feet from Ramjatan Dosad and Ram Ratan Dosad on 10.10.1980 and after purchasing constructed a two storied building and has been living in peaceful possession permanently till today.

The accused no.1 namely Sailen Biswas is a very dangerous and quarrelsome and greedy person known in the locality and his son, the accused no.2 namely Romio Biswas adopted the same nature of his father. On 10.10.1980, the accused no.1 namely Shri Sailen Biswas purchased a plot of land measuring about 06 Chittak 35 sq. feet or 305 square feet of land adjacent to the plot of the father of the petitioner by virtue of Sale Deed from Ramjatan Dosad and Ram Ratan Dosad on 10.10.1980.

Since the purchase of the aforesaid land, the accused no.1 namely Sailen Biswas neither visited his place nor took any initiative to clean the area. Whereas the petitioner along with his father has been maintaining the area for long.

After purchase of the aforesaid land, the petitioner came to know that there exists extra 01 (one) Cottah of land and the petitioners have been enjoying the peaceful vacant possession without any interruption over the said property for last 43 (forty three years).....”

3. It is further stated that in the month of March, 2020, the accused no.1 Shri Sailen Biswas along with his son, the accused no.2 namely Shri Romio Biswas approached the father of the petitioner, that since there is no boundary wall over their entire property, it is beneficial for both to construct a boundary wall and as such the petitioner was agreeable to the proposal of the above noted accused persons and they also verbally

ensured in presence of their relatives that the petitioner will be permitted to keep his four wheeler vehicle at the premises once the boundary wall is completed. That the petitioner requested several times to the above noted accused persons namely Sailen Biswas and Romio Biswas to make a written agreement, but the accused persons always deferred the same on one pretext after another.

It is further stated that the complainant and his father invested Rs. 3,00,000/- whereas the petitioners herein/accused persons invested only Rs. 1,00,000 lakh for the boundary wall. It is stated that after the completion of the boundary wall, **the petitioners have encroached 110 sq. feet over the property of the father of the complainant and as such the dispute arose.**

4. On perusal of the petition of complaint it appears that entire allegation as made in the petition of complaint shows that the **dispute between the parties is civil in nature but the complainant has initiated this criminal case on the said ground.**
5. 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.”*

6. The said case is under Sections 323/379/420/406/506/34 of IPC. None of the ingredients is prima facie present for the offences alleged against the accused persons/petitioners herein.

7. **CRR 3161 of 2023 is allowed.**
8. The proceedings being complaint case no.118 of 2023, alleging the commission of offences punishable under Sections 323 /379 /420 /406 /506 /34 of the Indian Penal Code, 1860, presently pending before the court of the learned Judicial Magistrate, 2nd Court, Barrackpore, North 24 Parganas, **is hereby quashed in respect of the petitioners namely Sailen Biswas and Romio Biswas.**
9. All connected applications, if any, stands disposed of.
10. Interim order, if any, stands vacated.
11. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
12. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)