IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3370 of 2011

Prasanta Ghosh & Ors.
-Vs-
The State of West Bengal

For the Petitioners	: Mr. Sabir Ahmed Mr. Ansuman Bera
For the State	: Mr. N. P. Agarwala, Mr. Pratick Bose
Heard on	: 24.01.2024, 06.03.2024, 13.06.2024
Judgment on	: 16.08.2024

<u>Ananya Bandyopadhyay, J.:-</u>

1. The instant revisional application has been filed by the petitioners for quashing of the proceeding in G.R. Case No.496/2011, arising out of Mogra Police Station Case No.109 dated 30.04.2011 under Sections 406/420/323/506/34 of the Indian Penal Code, giving rise to Charge-sheet No.198 dated 31.08.2011 under Sections 406/420/323/506/34 of the Indian Penal Code as well as order dated 29.09.2011 passed by the Learned Chief Judicial Magistrate, Hooghly Sadar, for taking cognizance of the offence upon the charge-sheet.

2. The petitioners No.1 and 3 are the farmers respectively aged about 59 years and 33 years. The petitioner No.4 worked in W.B.S.E.D.C.L. as a contractual

serviceman aged about 31 years and petitioner No.2 has been a housewife aged about 52 years.

3. The de facto complainant Susanta Ghosh had been the brother of petitioner No.1 enraged in an acrimonious family dispute with the accused petitioners.

4. On 17.03.2011, Prasanta Ghosh (petitioner No.1) lodged a complaint at Mogra P.S. and Mogra P.S. Case No.60 under Section 380 of the Indian Penal Code was initiated against the de facto complainant Susanta Ghosh and his son Mithu Ghosh regarding theft of one domestic gas cylinder. Subsequently, the gas cylinder was recovered from the house of Susanta Ghosh and as such charge-sheet being No.70 was submitted on 31.03.2011 under Sections 379/411 of the Indian Penal Code.

5. On 25.04.2011, Susanta Ghosh, the brother of petitioner No.1, filed an application under Section 156(3) of the Code of Criminal Procedure before the Learned Chief Judicial Magistrate, Hooghly to the effect that on 03.02.2010 Prasanta Ghosh took Rs.60,000/- from the de facto complainant and promised to provide his son (Mithu Ghosh) a job in the office of B.L. & L.R.O. within a year. It had been alleged that one year had passed but Mithu was not provided with any job. On 13.04.2011, the complainant asked to return Rs.60,000/- from petitioner No.1 who assured by way of Angikarpatra that on 16.04.2011, he would refund Rs.60,000/-. On 16.04.2011 when the complainant went to the house of petitioner No.1 for the money, but the accused persons denied to refund. Thus, the instant case had been filed by way of an application under Section 156(3) of the Code of Criminal

Procedure and the same had been registered as Mogra P.S. Case No.109 on 30.04.2011 under Sections 406/420/323/506/34 of the Indian Penal Code.

6. The alleged occurrence took place on 16.04.2011 but the application under Section 156(3) of the Code of Criminal Procedure was filed on 25.04.2011 after a delay of 9 days which was the counter-allegation of their F.I.R. being Mogra P.S. Case No.60 dated 17.03.2011.
7. Charge-sheet being No.148 dated 31.08.2011 had been submitted under Sections 406/420/323/506/34 of the Indian Penal Code and the Learned Chief Judicial Magistrate, Hooghly Sadar, on 29.09.2011 took cognizance of the offence upon the charge-sheet.
8. Petitioner No.1 neither took money from the de facto complainant giving him assurance that he would provide job to the son of the de facto complainant nor made any Angikarpatra on 13.04.2011 for refunding the money to the tune of Rs.60,000/- to the de facto complainant and as such the allegation of entering into the Angikarpatra on 13.04.2011 was not only fabricated allegation but also a forged document.
9. No cause of action arose on 16.04.2011 as alleged by the de facto complainant and had it been so, the de facto complainant would not have filed the application under Section 156(3) of the Code of Criminal Procedure after a delay of 9 days that was on 25.04.2011.
10. The petitioners stated that petitioner No.2 to 4 had no involvement in the commission of the alleged offence as also no criminal breach of trust could be made out from the complaint against them. As such the complaint filed

did not constitute any cause of action on the basis of which any case under Sections 406/420/323/506/34 of the Indian Penal Code could be made out.

11. There was no ingredient of cheating on the part of the petitioners which could be an offence under Section 420 of the Indian Penal Code.
12. Petitioner No.1 on 16.04.2011 was not even present at the place of the alleged occurrence. From 16.04.2011 to 17.04.2011 till 08:00 A.M., he was at Tarapith staying in Ramkanai Dharmasala. As such even involvement of petitioner No.1 did not arise at all.
13. The complaint filed by the de facto complainant should not have been treated as First Information Report and as such proceeding thereunder was liable to be set aside.
14. The Learned Chief Judicial Magistrate, Hooghly, should not have taken cognizance of the offence upon the charge-sheet and as such order dated 29.09.2011 for taking cognizance was liable to be set aside.

15. Learned Advocate for the petitioners submitted that:-

    i. The de facto complainant namely Susanta Ghosh was the brother of petitioner No.1 and there had been long standing family dispute between the complainant party and the accused persons and the instant case was the counter-allegation of the case of the petitioners which was Mogra Police Station Case No.60 dated 17.03.2011.

ii. The alleged occurrence took place on 16.04.2011 but the application under Section 156(3) of the Code of Criminal Procedure was filed on 25.04.2011, i.e., after a delay of 9 days.

iii. Petitioner No.1 neither took money from the de facto complainant giving him assurance that he would provide job to his son in the B.L. & L.R.O. office nor made any Angikarpatra on 13.04.2011 for refunding Rs.60,000/-.

iv. The alleged Angikarpatra dated 13.04.2011 was not only a fabricated allegation but also a forged document.

v. Petitioner Nos.2, 3 and 4 had no involvement in the commission of the alleged offence as also no criminal breach of trust or any ingredient of cheating on their part could be made out from the complaint.

vi. Petitioner No.1 on 16.04.2011 was not even present at the alleged place of occurrence and in fact from 16.04.2011 to 17.04.2011 till 08:00 A.M., he was at Tarapith in Ramkanai Dharmasala. As such involvement of petitioner No.1 did not arise at all.

vii. No cause of action arose as alleged by the de facto complainant.

viii. The petitioner no.1, namely Prosanta Ghosh, had lodged a complaint to the Officer-in-Charge, Mogra Police Station on 17.03.2011 stating that his brother, namely Susanta Ghosh, being the complainant in the present case, and his nephew, namely Mithun Ghosh, had stolen gas cylinders, regulator and oven on

28.10.2010, when he went out for cultivation and the neighbours were informed about the incident, who divulged his brother, namely Susanta Ghosh and his nephew, namely Mithun Ghosh, had taken gas cylinders, regulator and oven and, thereafter, he had asked his brother to return the same, who flatly refused and the petitioner no.1 had to approach the Prodhan of local Gram Panchayat and there was a "Salisi", but said Susanta Ghosh refused to return the same. On the basis of such complaint, Mogra Police Station registered a case, being Mogra Police Station Case No.60 of 2011 dated 17.03.2011 under Section 380 of the Indian Penal Code, 1860 against said Susanta Ghosh and Mithun Ghosh and after investigation, the Investigating Agency filed a charge-sheet, being Charge-sheet No.70 of 2011 dated 31.03.2011 under Sections 379/411 of the Indian Penal Code, 1860 and the gas cylinders were recovered from the possession of the accused persons.

ix. Immediately, thereafter, on 25.04.2011 the complainant, namely Susanta Ghosh, rushed to the Court and engineered a false complaint and lodged an application under Section 156(3) of the Code of Criminal Procedure, 1973 to counter the complaint lodged by the petitioner no.1. There was no iota of proof that the petitioner no.1 had taken a sum of Rs.60,000/- and the execution of the document allegedly to be proved on 13.04.2011 did not arise at all as already there was a enmity by and between petitioners' family and the complainant's family, so the question of meeting the complainant and undertaking to report on 16.04.2011 in front of the State Bank of India, Mogra Branch did not arise at all. Had the documents executed on 13.04.2011 as stated in para 3 of the complaint, so the question of lodging the complaint on the same date to the Officer-in-Charge, Mogra Police Station did not arise at all. The breadth and length of the complaint clearly indicated that the complaint had been registered with wreak vengeance and oblique purposes to harass and humiliate the petitioners.

x. From the charge-sheet it would be evident that the accused No.2 was arrested on 18.03.2011 on the next date of lodgement of the complaint by the petitioner no.1 and, thereafter, the question of communication between the two families did not arise at all and the entire incident narrated in the complaint was engineered only to implicate the petitioners in a false criminal case.

xi. The allegations did not constitute any offence under Sections 420/406/323 of the Indian Penal Code, 1860 and there was no iota of material indication that the petitioner no.1 had any intention to deceive the complainant. The contemporaneous document with regard to the payment had not been depicted during the course of investigation, mere blunt allegation to counter the complaint of the petitioners clearly indicated that with wreak vengeance the complaint had lodged and after a purported investigation the charge-sheet had been filed. The petitioner no.1 and the complainant were the brothers and there was family turmoil by and between the two families and the petitioner no.1 had lodged at the earliest by the time, for which the son of the complainant was arrested and, thereafter, a complaint popped up against the petitioners. The basic evidence of the complaint was payment of money to the tune of Rs.60,000/- for arranging an employment, but the Investigating Agency during the course of investigation could not establish that how and when the money was given except the false allegations of the complainant. The situation prevalent subsequent to the lodgement of the complaint by the petitioner no.1 and the arrest did not indicate in any manner whatsoever that there could be possibility of refund of the money, which was allegedly taken by the petitioner no.1 for employment. The entire allegation was based on a document, which had no legal patronage in the eye of law. There was no specific allegation against other two petitioners and the entire allegation revolved the monetary transaction, which had no documentary support.

xii. The enmity between the two families was apparent on the prior complaint lodged by the petitioner no.1 and the arrest made to the son of the complainant on 18.03.2014 and, thereafter, the complaint had been lodged against the petitioners only with as counter-blast to the complaint and with wreak vengeance to harass the petitioners.

xiii. In such circumstances, further continuation of the proceeding would be an abuse of the process of law and the petitioners respectfully submitted that the instant Criminal Revisional Application be allowed and the proceedings, being G.R. Case No.496 of 2011 arising out of Mogra Police Station Case No.109 of 2011 dated 30.04.2011 under Sections 406/420/323/506/34 of the Indian Penal Code, 1860 be quashed.

16. The Learned Advocate for the State placed the documents in the case diary for the perusal of this Court and submitted that prima facie offence to have been committed by the petitioners had been established through filing of charge-sheet and therefore the trial should proceed.

17. The Hon'ble Supreme Court held the following in ***Delhi Race Club (1940) Ltd. v. State of U.P.***[1]:-

> ***"In order to constitute a criminal breach of trust (Section 406 IPC)***:—
> *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*

[1] 2024 SCC OnLine SC 2248

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).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are*:—*

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 LJ 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. *In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.*

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> ***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.*

18. The Hon'ble Supreme Court held the following in ***Jay Shri v. State of Rajasthan***[2]:-

> ***"4.*** *Prima facie, in our opinion, mere breach of contract does not amount to an offence under Section 420 or Section 406 of the Penal Code, 1860, unless fraudulent or dishonest intention is shown right at the beginning of the transaction. This Court has time and again cautioned about converting purely civil disputes into criminal cases. 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."*

19. The following was held by the Hon'ble Supreme Court in ***Parveen v. State of Haryana***[3]

> ***"12.*** *It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators*

[2] 2024 SCC OnLine SC 54
[3] 2021 SCC OnLine SC 1184

for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused.…"

20. The Hon'ble Supreme Court held the following in **Radheyshyam v. State of Rajasthan**[4]

"6. *As already indicated above, a perusal of the complaint which has been registered as the FIR does not spell out any element or ingredient of cheating or breach of trust. Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust. Respondent no. 2 has adequate remedy of filing a Civil Suit for relief of specific performance of a contract which he has already availed and the suit is still pending. The FIR only appears to be an arm-twisting mechanism to pressurise the appellants to execute the Sale Deed or to extract money. Every civil wrong cannot be converted into a criminal wrong. As we find in the present case, respondent no. 2 is trying to abuse the criminal machinery for ulterior motives. It is not his case that the appellants duped him to pay the advance amount and entered into an Agreement to Sell. The High Court fell in error in recording a finding that the ingredients of offences under sections 420 and 406 of IPC are present in the instant case.*

7. *Section 420, IPC provides that:*

"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

[4] 2024 SCC OnLine SC 2311

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."

For an offence under Section 420, IPC, the following ingredients must be present:

i. Cheating as defined under Section 415, IPC, that is, there should be a fraudulent or dishonest inducement of a person;

ii. An intention to deceive; and

iii. The person cheated must be dishonestly induced to

a. Deliver property to any person; or

b. Make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

8. *Thus, cheating forms an essential ingredient to constitute and offence under Section 420, IPC. Further, to constitute cheating as defined under Section 415, IPC, it is necessary that a fraudulent or dishonest inducement is done and the deceived person is made to deliver any property owing to the fraud. Section 415, IPC, defines 'cheating', as:*

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces 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 which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

9. *From the bare perusal of the FIR, it is evident that there was no act of cheating, that is, the complainant was nowhere fraudulently induced or dishonestly deceived by the appellants. A commercial transaction took place between the parties during which the parties consensually agreed for the sale of the property of the appellants* *and respondent no. 2 paid the part consideration. The default in payment of their loan dues on part of the appellants is not reflective of their deceitful intention towards the complainant. Mere non-registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of an Agreement to Sell and it is not the case of the respondent that he was in anyway deceived or duped to make such payments to the appellants. It is a civil dispute and gives rise to the complainant's right to resort to the remedies provided under civil law by filing a suit for specific performance.*

10. *Additionally, the appellants have also been accused of committing the offence of criminal breach of trust under Section 406, IPC. This offence is defined under Section 405, IPC as follows:*

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off 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 wilfully suffers any other person so to do, commits "criminal breach of trust"."

11. *For an offence punishable under Section 406, IPC, the following ingredients must exist:*

i. The accused was entrusted with property, or entrusted with dominion over property;

ii. The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

iii. Such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such *trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.*

12. *In the present case, the appellants were not entrusted with any property by respondent no. 2 - complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2. Additionally, merely because the appellants are refusing to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out."*

21. In the case of ***Mohd. Wajid v. State of U.P.***[5]***,*** the Hon'ble Supreme Court held the following:-

> ***"30.*** *A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant."*

22. The Hon'ble Supreme Court held the following in the case of ***Manik Taneja v. State of Karnataka***[6]*:-*

> ***"11.*** *Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:*
>
> *"**503.Criminal intimidation**.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent*

[5] 2023 SCC OnLine SC 951
[6] (2015) 7 SCC 423

to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do."

23. The Hon'ble Supreme Court observed the following in ***Vikram Johar v. State of U.P.***[7]:-

"23. *In another judgment i.e. Manik Taneja v. State of Karnataka [Manik Taneja v. State of Karnataka, (2015) 7 SCC 423 : (2015) 3 SCC (Cri) 132] , this Court has again occasion to examine the ingredients of Sections 503 and 506. In the above case also, case was registered for the offence under Sections 353 and 506 IPC. After noticing Section 503, which defines criminal intimidation, this Court laid down the following in paras 11 and 12 : (SCC pp. 427-28)*

*"11.****

[7](2019) 14 SCC 207

A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."

In the above case, allegation was that the appellant had abused the complainant. The Court held that the mere fact that the allegation

> *that accused had abused the complainant does not satisfy the ingredients of Section 506 IPC."*

24. The complaint portrayed a private dispute between the parties endorsing a promissory note, the validity of which is a subject matter of the civil court to test its veracity. The materials on record reveal the dispute between the parties to be civil in nature devoid of the elements to constitute the alleged offences as discussed above.
25. To allow, to continue with the trial of the instant case will result into an abuse of the process of law.
26. In view of the above discussions, the proceeding in G.R. Case No.496/2011, arising out of Mogra Police Station Case No.109 dated 30.04.2011 under Sections 406/420/323/506/34 of the Indian Penal Code, giving rise to Charge-sheet No.198 dated 31.08.2011 under Sections 406/420/323/506/34 of the Indian Penal Code as well as order dated 29.09.2011 passed by the Learned Chief Judicial Magistrate, Hooghly Sadar is quashed.
27. Under such circumstances, the instant criminal revisional application being CRR 3370 of 2011 is accordingly allowed.
28. There is no order to costs.
29. Department is directed to return the Case Diary forthwith.
30. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

31. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)