IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3141 of 2019

Soham Das

Vs

The State of West Bengal & Anr.

For the Petitioner	: Mr. Rajdeep Mazumder, Mr. Moyukh Mukherjee, Mr. Abhijit Singh.
For the State	: Mr. Suman De.
For the Opposite Party No. 2	: None.
Hearing concluded on	: 10.01.2024
Judgment on	: 18.01.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the Charge Sheet and/or the entire proceedings being GR Case No. 327/17 arising out of Bidhannagar (North) Police Station Case No. 75/17 dated 20/04/2017 under Sections 406/467/471 of the Indian Penal Code, 1860 pending before the Court of the Learned Additional Chief Judicial Magistrate, Bidhannagar.

2. In spite of due service even through the State there is no representation on behalf of the Opposite Party No. 2.

3. The dispute in this case relates to a Motor Cycle, in respect of the complaint filed by the Opposite Party No. 2 stating that he had purchased a Benelli TNT 25 Motorbike on 10th August, 2016. That in good faith, he had given the said bike to the petitioner for keeping the said bike in the garage as there was some minor construction work taking place in his garage. Since September, 2016, the petitioner had not been receiving the calls of the informant as well as their common friends and the complainant found out that the petitioner had sold off the bike without any consent from the informant, by forging certain papers.

4. On the basis of the aforesaid complaint, Bidhannagar (North) Police Case No. 75/17 dated 20.04.2017 under Sections 467/471/406 of the Indian Penal Code, was registered for investigation against the petitioner herein.

5. The petitioner states that the complainant had voluntarily handed over the bike and in spite of alleging that his calls were not answered, filed the case after six months, without making any attempts to recover the bike.

6. It has been specifically stated in the written complaint, that the Opposite Party No. 2 wants either his bike, or the equivalent sum of the said bike, and in such backdrop, it is pertinent to mention herein that the said motorbike in question, ever since it was handed over to the petitioner by the said informant, it was all along kept in the residence of petitioner. The petitioner always had the intention of returning the said bike to the Opposite Party No. 2, in the event he demanded the return of the same. Furthermore, even after registration of the instant case, the petitioner and his father, namely, Mr. Debashis Das, on several occasions spoke to the Opposite Party No. 2, and told him to take back the said motorbike, so that they could reach an amicable settlement in the matter. However, the Opposite Party No. 2, did not pay heed to such requests made by the petitioner, as he had the single point agenda of getting the petitioner arrested in connection with the instant case.

7. Charge Sheet has been filed being 81/2009 under Sections 406/467/471/506 of the Indian Penal Code.

8. It is further stated that the motorbike in question and all its related papers which are still in the name of the complainant were seized by the police on 19.06.2017.

9. Hence the prayer for quashing of the proceedings.

10. The State has placed the Case diary. Charge Sheet in this case has been filed for the commission of offences under Sections 406/467/471/506 of the Indian Penal Code.

11. The case was registered on 20.04.2017. The motor bike in dispute was received in Zimma by the complainant on 23.06.2017.

12. Tax paid invoice in respect of the vehicle is dated 8th July, 2016. Copy of the Smart Card shows that the same has been received by one Subhankar Das on behalf of the Complainant on 17.09.2016.

13. Forgery alleged is in respect of a letter issued to the Manager (Benelli) by the Complainant authorising the accused to receive the registration papers in respect of the bike.

14. The complainant has alleged that the accused has sold the bike without his consent by taking copies of the registration papers from the dealer using a fraudulent authorization letter.

15. Though the investigation has ended in a Charge Sheet, with the accused also being in police custody:-

i) There are no documents on record to support the allegation of sale of the bike.

ii) The alleged fraudulent authorization letter has not yet been proved to be fraudulent, though Charge Sheet has been filed under Sections 406/467/471/506 of the IPC.

16. Section 406 of the Indian Penal Code, lays down:-

> *"**406. Punishment for criminal breach of trust.—** Whoever commits criminal breach of trust shall be*

punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ingredients of offence.— *The essential ingredients of the offence under Sec. 406 are as follows:-*

(1) Mens rea is essential ingredient of offence.
(2) There must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract.
(3) The accused was entrusted with the property or domain over it.
(4) He dishonestly misappropriated or converted to his own use such property;
(5) He dishonestly used or disposed of that property or willfully suffered any other person to do so in failure of-
(a) Any direction of law prescribing the mode in which such trust is to be discharged, or
(b) Any legal contract made touching upon the discharge of such trust."

17. In ***Deepak Gaba & Ors. vs State of Uttar Pradesh & Anr., in Criminal Appeal No. 2328 of 2022, on 2 January, 2023,*** the Supreme Court held:-

*"**13.** Section 406 of the IPC8 prescribes punishment for breach of trust which may extend to three years or with fine or with both, when ingredients of Section 405 of the IPC are satisfied. For Section 406 of the IPC to get attracted, there must be criminal breach of trust in terms of Section 405 of the IPC.9 For Section 405 of the IPC to be attracted, the following have to be established:*

(a) the accused was entrusted with property, or entrusted with dominion over property;

8 406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

> *9 405. Criminal breach of trust.—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 of 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".*
>
> *(b) 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*
>
> *(c) 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.*
>
> ***14.** Thus, criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust."*

18. **In the present case,** though there was an entrustment (of the bike), there is absolutely no material on record to prima facie show that the accused has dishonestly mis-appropriated or converted the property for his own use. There is also no document to support the allegation of sale of the property (Bike).

19. Thus the ingredients required to constitute an offence under Section 406 IPC is prima facie absent in respect of the accused.

20. **The next offence alleged is under Section 471 of IPC, which lays down:-**

> *“**471. Using as genuine a forged document.**-Whoever fraudulently or dishonestly uses as genuine any *[document or electronic record] which he knows or has reason to believe to be a forged *[document or electronic record], shall be punished in the same manner as if he had forged such *[document or electronic record].*
>
> ***Ingredients of offence.**-The essential ingredients of the offence under sec. 471 are as follows:-*
> *(1) The accused fraudulently or dishonestly used a document or electronic record as genuine;*
> *(2) The accused knew or had reason to believe that the document or electronic record was a forged one - State v Kailash Prosad AIR 1961 Pat 451; Ram Narayan v CBI (2003)3 SCC 641.”*

21. In ***Deepak Gaba & Ors. vs State of Uttar Pradesh & Anr., (Supra),*** the Supreme Court further held:-

> *“**18.** Section 471 of the IPC is also not attracted. This Section is applicable when a person fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reasons to believe to be a forged document or electronic record. This Court in Mohd. Ibrahim and Another (Supra), has elucidated that the condition precedent of an offence under Section 471 of the IPC is forgery by making a false document or false electronic record or part thereof. Further, to constitute the offence under Section 471 of the IPC, it has to be proven that the document was "forged" in terms of Section 470, and "false" in terms of Section 464 of the 471. Using as genuine a forged document or electronic record-Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record. 470. Forged document-A false document or electronic record) made wholly or in part by forgery is designated a forged document or electronic record IPC15. Section 470 lays down that a document is forged' if there is: '(i) fraudulent or dishonest use of a document as genuine; and (ii) knowledge or reasonable belief on the part of the person using the document that it is a forged one. Section 470 defines a forged document as*

a false document made by forgery. As per Section 464 of the IPC, a person is said to have made a 'false document':
(i) if he has made or executed a document claiming to be someone else or authorised by someone else; (ii) if he has altered or tampered a document; or (iii) if he has obtained a document by practising deception, or from a person not in control of his senses.
Unless, the document is false and forged in terms of Sections 464 and 470 of the IPC respectively, the requirement of Section 471 of the IPC would not be met.
464 Making a false document A person is said to make a false document or false electronic record First-Who dishonestly or fraudulently-
(a) makes, signs, seals or executes a document or part of a document; (b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any electronic signature on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or 2 (electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly. - Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly-Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.
***21.** We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2- complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations pertain to alleged breach of contractual obligations. Pertinently, this Court, in a number of cases, has noticed*

attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in Thermax Limited and Others v. K.M. Johny 16, as it refers to earlier case laws in copious detail. In Thermax Limited and Others (Supra), 16 (2011) 13 SCC 412, it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. 17 Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the 17 Birla Corporation Limited v. Adventz Investments and Holdings Limited and Others, (2019) 16 SCC 610, Pepsi Foods Ltd. (Supra); and Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420. offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort

> *to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.*
>
> ***24.** We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. 19 Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, 19 Birla Corporation Limited (Supra); Mehmood Ul Rehman (Supra); R.P. Kapur v. State of Punjab, AIR 1960 SC 866; and State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335; on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued."*

22. **In the present case,** the Charge Sheet under Section 471 IPC has been filed, but without any materials on record to show that the alleged false and fraudulent authorization had been forged or more specifically allegedly forged by the accused, in terms of Sections 464/470 IPC respectively.

23. Thus the requirements of Section 471 of IPC has also not been met by the prosecution.

24. Consequently the ingredients required to constitute the offence alleged under Section 467 IPC is also clearly absent against the accused in this case.

25. **The next offence alleged is under Section 506 of IPC:-**

> *"**506. Punishment for criminal intimidation.**-Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,*
> ***if threat be to cause death or grievous hurt, etc.**-and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*
>
> ***Ingredients of offence.**- The essential ingredients of the offence under sec. 506 are as follows:-*
> *(1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;*
> *(2) The accused did so with intent to cause alarm to the victim of offence;*
> *(3) The accused did so to cause the victim to perform any act which he was not legally bound to do."*

26. In ***Mohammad Wajid & Anr. vs State of U.P. & Ors., on August 08, 2023, in Criminal Appeal No. 2340 of 2023,*** the Supreme Court held:-

> *"**23.** Chapter XXII of the IPC relates to Criminal Intimidation, Insult and Annoyance. Section 503 reads thus:-*
>
> ***"Section 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 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.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation."

Section 504 reads thus:-

*"**Section 504. Intentional insult with intent to provoke breach of the peace.—**Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*
Section 506 reads thus:-

*"**Section 506. Punishment for criminal intimidation.—**Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*

If threat be to cause death or grievous hurt, etc.— *And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

24. *An offence under Section 503 has following essentials:-*
1) Threatening a person with any injury;
(i) to his person, reputation or property; or
(ii) to the person, or reputation of any one in whom that person is interested.
2) The threat must be with intent;

> *(i) to cause alarm to that person; or*
> *(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or*
> *(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat."*

27. **In the present case,** there is no allegation of any Criminal intimidation either in the written complaint or in the Case Diary. There is no allegation of any threat or intimidation by the accused. In fact, it has been alleged that the accused avoided the complainant.

28. In ***Abhishek vs State of Madhya Pradesh, in Criminal Appeal No. 1456 & 1457 of 2015, on August 31, 2023,*** the Supreme Court held:-

> *"**16.** Of more recent origin is the decision of this Court in **Mahmood Ali and others vs. State of U.P. and others (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023)** on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, **then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely.** It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with*

> *due care and circumspection, to try and read between the lines.*"

29. The complaint in this case does not contain the ingredients required to constitute an offence under Section 506 IPC. There also being no evidence on record to prima facie prove the offences alleged under Sections 406/471 IPC against the petitioner, as discussed earlier, it shall amount to abuse of the process law, if the present case is permitted to proceed towards trial.

30. CRR 3141 of 2019 is thus allowed.

31. The proceedings being GR Case No. 327/17 arising out of Bidhannagar (North) Police Station Case No. 75/17 dated 20/04/2017 under Sections 406/467/471 of the Indian Penal Code, 1860 pending before the Court of the Learned Additional Chief Judicial Magistrate, Bidhannagar **is hereby quashed.**

32. All connected Applications, if any, stand disposed of.

33. Interim order, if any, stands vacated.

34. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

35. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)