IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3503 of 2011

Sk. Mujit
-Vs-
Sri Ajoy Watman Chatterjee and Ors.

For the Petitioner	: Mr. Mukteswar Maity Ms. Nupur Chaudhuri
For the Opposite Party No.4	: Mr. Amar Nath Sen Mr. Amit Bikram Mahata Mr. Subhangi Panigrahi
Heard on	: 31.01.2024, 16.04.2024, 19.08.2024
Judgment on	: 04.12.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against an order dated 27.10.2011 passed by the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah in Complaint Case No.246C/09, thereby dismissing the case under the provision of Section 203 of the Code of Criminal Procedure.

2. Petitioner, the proprietor of M.C. Construction conduct construction business by dint of a license. He filed an application in the court of the Learned Additional Chief Judicial Magistrate, Uluberia under Section 156(3) of the Code of Criminal Procedure against the accused persons (the Opposite

Parties nos.1, 2, 3 & 4 herein) for treating the application as an F.I.R., alleging the commission of offence under Sections 120B/420/379/385 of the Indian Penal Code, inter alia, stating on 05.04.2007 accused persons (opposite parties nos.1, 2, 3 & 4 herein) entered into an agreement with the petitioner for construction of the building over the plot in question in accordance to building plan. Complying the terms of the agreement the petitioner constructed the building. Though the opposite party no.1 paid a sum of Rs.32,20,000/- (Rupees Thirty Two Lacks Twenty Thousand) out of total amount of Rs.52,09,500/- (Rupees Fifty Two Lacks Nine Thousand and Five Hundred) only, however, failed to pay the balance amount in spite of repeated requests. The opposite party no.2, 3 were the brothers-in-law of the opposite party no.1.

3. On 01.05.2009 the opposite parties forcefully took possession of the building without paying the balance amount of Rs.19,89,500/- to the petitioner. The opposite parties further threatened the petitioner with dire consequences in spite of being cheated. The petitioner obtained loan from the Contai Co-Operative Bank Ltd., to complete the construction of the building in time.

4. Subsequently, Complaint Case No.246-C/09 was initiated. The cognizance was taken on 16.05.2009, as per Section 200 of the Code of Criminal Procedure and deposition of one witness, Sri Basudev Adhikary was recorded.

5. By an order dated 16.05.2009 the Learned Additional Chief Judicial Magistrate, inter alia, observed:- "*Complainant is present and examined himself and another witness on S.A. Perused the initial ejahar, pet. of*

complaint, documents, heard Learned Advocate and ongoing through the same it appears that a further enquiry of this case locally u/s 202 Cr.P.C., is required in this case. So, copy of this order and copy of petition of complaint along with its documents be sent to O/C, Bagnan P.S., with direction to enquires into the case u/s 202 Cr.P.C., and to submit a report before this court within. To 17.07.2009 for report for O/C, Bagnan P.S."

6. The I.C. of Bagnan P.S. submitted the report on 27.10.2011 after an inquiry held on 25.10.2011 i.e., after two years five months.
7. The construction of two storied building was not denied by the opposite parties. Only dispute, relating to final payment of the bill. Nothing whisper has been recorded with the acts of criminal offence as alleged against the accused persons. As such, the report submitted by the I.O. was nothing but a stereo typed report.
8. The Learned Advocate representing the petitioner submitted the Learned Magistrate receiving the police report after 2 years 5 months dismissed the Complaint Case under Section 203 of the Code of Criminal Procedure without complying the provisions of Section 202 of Criminal Procedure Code. The Learned Magistrate did not record specific reasons for dismissal under Section 203 of the Code of Criminal Procedure.
9. The order dated 27.10.2011 passed by the Learned Additional Chief Judicial Magistrate, Uluberia in Complaint Case No. 246C/2009 is reproduced hereinbelow:-

"<u>Order dated -21/10/11</u>

Today is fixed for report from I.C. Bagnan P.S. U/S 202 Cr.P.C. and execution of E.R. of W.A. Received the report from the Bagnan P.S. submitted by S.I. Subrata Bhattacharyya.

Later I.C. Bagnan P.S. also appeared in person and submitted his explanation in writing. He has stated that the case was endorsed to S.I. Mritunjoy Mishra by the ten I.C. Subrata Kanshabanik and later on to S.I. Tapan Aguan who was transferred to Howrah Commissionerate foing nothing in this case and thereafter the present I.C. ENDORSED THIS CASE TO Subrata Bhattacharyya and submitted the report this day and prays for mercy. The statement of I.C. is satisfactory and he is released with cautions not to commit such mistake in furt future. From the report submitted by the Bagnan P.S. and the statement recorded by the officer of the witnesses and that of the case report I find that there is no sufficient ground for proceeding the case against the accused persons named in complaint and I find this is fit case to dismiss the complaint U/S 203 Cr.P.C. On careful perusal I find no prima facie case either U/s 420 or Section 379 of 385 of the I.P.C. against any one of the accused persons so the case be dismissed.

Hence,

<u>Ordered</u>

that the instant case is hereby dismissed u/s 203 Cr.P.C."

10. The Hon'ble Supreme Court held the following in ***Shivjee Singh v. Nagendra Tiwary***[1]**:-**

> ***"13.*** *Section 203 empowers the Magistrate to dismiss the complaint if, after considering the statements made by the complainant and the witnesses on oath and the result of the inquiry or investigation, if any, made under Section 202(1), he is satisfied that there is no sufficient ground for proceeding. The exercise of this power is*

[1] (2010) 7 SCC 578

hedged with the condition that the Magistrate should record brief reasons for dismissing the complaint."

11. The Hon'ble Supreme Court held the following in ***Samta Naidu v. State of M.P.[2]:-***

> ***"11.1.*** *The issue was considered by the majority judgment of this Court as under : (Talukdar case [Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876 : (1962) 1 Cri LJ 770 : 1962 Supp (2) SCR 297] , AIR pp. 898-99, para 48)*
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> *"48. Under the Code of Criminal Procedure the subject of "complaints to Magistrates" is dealt with in Chapter XVI of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are Sections 200, 202 and 203. Section 200 deals with examination of complainants and Sections 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Sections 202 and 203 were laid down in Vadilal Panchal v. Dattatraya Dulaji Gha Digaonkar [Vadilal Panchal v. Dattatraya Dulaji Gha Digaonkar, AIR 1960 SC 1113 : 1960 Cri LJ 1499] . The scope of enquiry under Section 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 lays down what materials are to be considered for the purpose. Under Section 203 of the Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry, if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under Section 202 of the Criminal Procedure Code, and has judicially applied his mind to the material*

[2] (2020) 5 SCC 378

before him and then proceeds to make his order it cannot be said that he has acted erroneously.”

12. In ***Vijay Kumar Ghai V. State of W.B.***[3], the Hon’ble Supreme Court held the following:-

“31. *Section 415 IPC defines “cheating” which reads as under:*

*“**415. Cheating**.—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”.”*

The essential ingredients of the offence of cheating are:

1. Deception of any person

2. (a) Fraudulently or dishonestly inducing that person—

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were no 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.

32. *A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.*

33. *Section 420IPC defines “cheating and dishonestly inducing delivery of property” which reads as under:*

*“**420. Cheating and dishonestly inducing delivery of property**.—Whoever cheats and thereby dishonestly induces the*

[3] (2022) 7 SCC 124

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 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."

34. *Section 420IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.*

35. *To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:*

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. *As observed and held by this Court in R.K. Vijayasarathy v. Sudha Seetharam [R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:*

(i) a person must commit the offence of cheating under Section 415; and

(ii) 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. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420IPC.*

37. *The following observation made by this Court in Uma Shankar Gopalika v. State of Bihar [Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336 : (2006) 2 SCC (Cri) 49] with almost similar facts and circumstances may be relevant to note at this stage : (SCC pp. 338-39, paras 6-7)*

> *"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-BIPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. … It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC.*
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> *7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under*

Section 420 or Section 120-BIPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482CrPC which it has erroneously refused."

13. In ***National Bank of Oman v. Barakara Abdul Aziz*[4]**, the Hon'ble Supreme Court observed as follows:-

"9. *The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:*

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

[4] (2013) 2 SCC 488

14. In ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.***[5], the Hon'ble Apex Court held as follows:-

> ***"25.*** *Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 CrPC. The purpose of the enquiry under Section 202 CrPC is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.*
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> ***26.*** *The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 CrPC or whether the complaint should be dismissed by resorting to Section 203 CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused."*

15. The Learned Magistrate in the impugned judgment opined that the elements to constitute the offence under Sections 420/379/385 of the Indian Penal Code were non-existent considering the report filed by the I.C., Bagnan and

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[5] (2019) 16 SCC 610

thereafter dismissed the complaint under Section 203 of the Code of Criminal Procedure.

16. The Learned Magistrate did not elaborately discuss the circumstances which led the same to observe the absence of prima facie case initiated under the aforesaid Sections however placed reliance on the report filed in compliance of the provisions envisaged in Section 202 of the Code of Criminal Procedure. The Learned Magistrate directed the I.C., Bagnan to enquire and subsequently file a report complying the provisions of Section 202 of the Code of Criminal Procedure.

17. The report of the I.C., Bagnan stated the dispute between the parties to be civil in nature. The parties entered into a contract of construction of a building whereby certain amount as aforesaid was paid to the petitioner.

18. In order to constitute an offence under Section 420 of the Indian Penal Code, there must be an intent of the perpetrator to deceive any person from the inception. The opposite parties paid a sum of Rs.32,20,000/- with a balance of amount of Rs.19,89,500/- to be paid which cannot be construed to be the intent of the opposite parties to deceive the petitioner from the inception. There has been a violation of terms and conditions of an agreement of a contract as aforesaid giving rise to a civil dispute which cannot be confounded by a veil of criminality. The emanating tendencies of converting civil disputes into criminal cases for harassing, pressurizing, intimidating and prejudicing the opposite party are highly deprecated.

19. Apart from jeopardizing the status of the opposite party, it burdens the Criminal Courts to deal with false and frivolous complaints affecting judicial

hours of the Court, involvement of the staff, police administration which otherwise could have been utilized properly to dispose of cases concerning real issues in criminal law jurisdiction.

20. The Learned Trial Court rightly dismissed the complaint under Section 203 of the Code of Criminal Procedure denoting the absence of prima facie ingredients to constitute an offence under Sections 420/379/385 of the Indian Penal Code and this Court is not inclined to interfere with the same.
21. In view of the above discussions, the instant criminal revisional application being CRR 3503 of 2011 is dismissed.
22. There is no order as to costs.
23. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
24. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)