IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3879 of 2011

Suvendu Sekhar Das @ Bapu
-Vs-
The State of West Bengal & Anr.

For the Petitioner	: Mr. Milon Mukherjee
For the State	: Mr. Avishek Sinha
Heard on	: 12.09.2023, 14.01.2024, 12.04.2024, 15.04.2024, 08.08.2024
Judgment on	: 06.12.2024

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

1. The instant revisional application has been filed by the petitioner praying for quashing of the charge-sheet no.203/06 dated 30.12.2006 arising out of G.R. Case No.442 of 2006 corresponding to Purbasthali P.S. Case No. 204/06 dated 13.10.2006 under Sections 420/468/471/34 of the Indian Penal Code.
2. One Uma Sankar Kumar, S.I. of School Purbasthali North Circle, Patuli, Burdwan, lodged complaint precisely stating that on 13.10.06 around 14:30 hours, one Surender Mondal, S/o- Joydeb Mondal accompanied the petitioner, went to Hatsuri Primary Vidyalaya to join in service. The Head Master of Hatsuri Primary Vidyalaya refused to join him in the school and

asked him to contact the S.I. of School, Purbasthali North Circle. Surender Mondal along with the petitioner went to the office of S.I. of School, Purbasthali North Circle, where the petitioner disclosed himself to be an advocate practicing in the Hon'ble High Court at Calcutta and handed over the letter of appointment of Surender Mondal to the S.I. of School. The complainant suspected the letter of appointment to be a fake one, as it did not bear the signature of the authority. The complainant then contacted the D.I. of School and the Secretary Burdwan District Primary School Councils who stated that no such appointment letter was issued from their end and the letter of appointment was a fake one. The complainant alleged that Surender Mondal and Subhendu Sekhar Das viciously in conspiracy with others tried to secure job by producing forged documents. On the basis of the complaint of the complainant, Purbasthali P.S. Case No.204/06 dated 13.10.06 under Sections 420/468/471/34 of Indian Penal Code was registered.

3. On completion of investigation, Charge-sheet No.203/06 dated 30.11.06 was filed under Sections 468/471/420/34 of the Indian Penal Code against the accused (1) Surender @ Surendra Mondal and (2) Subhendu Sekhar @ Bapu Das s/o Sri Chandra Sekhar Das.

4. Learned Advocate for the petitioner submitted as follows:-

    i. The petitioner simply accompanied Surendra Kumar Mondal @ Surender Mondal and the Xerox copy of such appointment letter was supplied by Surendra Kumar Mondal @ Surender Mondal. Petitioner being a lawyer earlier moved a writ petition and obtained order from this Hon'ble Court as indicated above. Xerox copy of the appointment letter was handed over having no signature of the Chairman of District Primary School Council. Xerox copy of such appointment letter was seized. It was a piece of paper having no value and it was not even a secondary evidence. It could not be termed as ‘property’ or ‘valuable security’. Ingredients of forgery were missing. There was no *mens rea* on the part of the petitioner particularly when he was not the beneficiary and did not cheat anybody. The purported forged document was not seized from the petitioner rather it was seized from Uma Shankar Kumar. A document without any signature was not at all valid document. In any event, the petitioner simply acted as a lawyer and accompanied Surendra Kumar Mondal @ Surender Mondal. The petitioner should have checked the Xerox copy of such appointment letter but negligently did not do so. Subsequently, the petitioner came to know that Chairman, District Primary School Council, Burdwan rejected the prayer of Surendra Kumar Mondal @ Surender Mondal.

ii. Section 467 of I.P.C. provided that whoever forged the document which purported to be a valuable security should be punished with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years shall also liable to fine. Section 471 of the I.P.C. said that whoever fraudulently or dishonestly uses as genuine any document which he knew or had reasons to believe to be a forged documents should be punished in the same manner as if he had forged such document. So far as petitioner was concerned, no charge could be established against him under Sections 420/468/471/34 of Indian Penal Code, 1860. To constitute an offence under Section 420 of IPC, there should not only be cheating but as a consequence of such cheating, the accused should have dishonestly induced the person deceived. The averments made in the FIR, Charge-sheet and the statements recorded by the Investigating Officer even if assumed to be true, did not make out any offence under Sections 420/468/471/34 of IPC. Continuation of the present criminal proceedings against the petitioner would be an abuse of process of law.

5. The Learned Advocate representing the petitioner relied on the decisions reported in *(2009) 8 SCC 751 (Mohammaed Ibrahim & Others -Vs- State of Bihar & Another); (2018) 7 SCC 581 (Sheila Sebastin -VS- R. Jawaharaj & Another).*

6. The Learned Advocate representing the State relying upon the documents in the case diary submitted that the statements recorded under Section 161 of the Code of Criminal Procedure amplified the involvement of the petitioner in the alleged offence and since the charge-sheet had been filed, a prima facie case had been established which required to be adjudicated through the process of trial and, therefore, the instant revisional application should be dismissed.

7. The petitioner in the capacity of a practicing Advocate of the High Court at Calcutta advised one Surendra Kumar Mondal to move a writ petition being

No.18657(w) of 2003 before this Court seeking compassionate appointment on account of the death of his father who died in harness.

8. The aforesaid writ petition was disposed of by this Hon'ble Court, inter alia, observing as follows:

   "Petitioner's application for appointment in the category of death in harness, shall be considered, in accordance with law, by the Council and disposed of by passing a speaking order, upon hearing the petitioner. Such decision shall be communicated in writing, after the same being disposed of, within a period of eight weeks from the date of communication of this order".

9. The complainant based his complaint on suspicion that the Xerox copy of the appointment letter devoid of a signature endorsed by the appointing authority was forged.

10. The petitioner accompanied his client to the office of the complainant the Sub Inspector of School who was skeptical about its authenticity and was dubious of the questionable nature of the document.

11. The complaint revealed the doubtful and suspicious assumption on the part of the complainant supported by the statement of the persons recorded under Section 161 of the Code of Criminal Procedure without any corroboration in terms of documents as well as involvement. The charge-sheet filed by the Investigating Officer did not mention that the Xerox copy of the letter of appointment was subjected to an examination to detect whether the same had been forged or not.

12. Mere suspicion without plausible evidence which can not be proved through the trial will frustrate the process of law.

13. In ***Deepak Gaba v. State of U.P.,***[1] the Hon'ble Supreme Court observed as follows:

> ***"18.*** *In order to apply Section 420IPC, namely, cheating and dishonestly inducing delivery of property, the ingredients of Section 415IPC have to be satisfied. To constitute an offence of cheating under Section 415IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415IPC is "fraudulence", "dishonesty", or "intentional inducement", and the absence of these elements would debase the offence of cheating. [Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74 : (2010) 3 SCC (Cri) 1201]*
> ***19.*** *Explaining the contours, this Court in Mohd. Ibrahim v. State of Bihar [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929. This Court, in this case, has cautioned that the ratio should not be misunderstood, to record the clarification, which in the present case, in our opinion, is not of any avail and help to Respondent 2 complainant. We respectfully concur with the clarification as well as the ratio explaining Sections 415, 464, etc. IPC.] , observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced the person deceived to deliver any property to a person; or 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.*
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> ***21.*** *Section 471IPC ["**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*

[1] (2023) 3 SCC 423

*punished in the same manner as if he had forged such document or electronic record."] 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 [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929. This Court, in this case, has cautioned that the ratio should not be misunderstood, to record the clarification, which in the present case, in our opinion, is not of any avail and help to Respondent 2 complainant. We respectfully concur with the clarification as well as the ratio explaining Sections 415, 464, etc. IPC.] , has elucidated that the condition precedent of an offence under Section 471IPC is forgery by making a false document or false electronic record or part thereof. Further, to constitute the offence under Section 471IPC, it has to be proven that the document was "forged" in terms of Section 470 ["***470. Forged document***.—A false document [or electronic record] made wholly or in part by forgery is designated "a forged document or electronic record"."] , and "false" in terms of Section 464IPC ["***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 a document, electronic record or *[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* Substituted for "digital signature" by Act 10 of 2009, Section 51(e) (w.e.f. 27-10-2009)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; orThirdly.—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.”] .*

***22.** 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.

***23.** As per Section 464IPC, 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.

***24.** Unless the document is false and forged in terms of Sections 464 and 470IPC respectively, the requirement of Section 471IPC would not be met.”*

14. In ***Ram Narayan Popli v. CBI,*[2]** the Hon’ble Supreme Court observed as follows:-

> ***“366.*** *Section 420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients : deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself.*

[2] (2003) 3 SCC 641

367. *Section 467 relates to forgery of such documents as valuable securities and of other documents mentioned.*

368. *Section 468 deals with forgery for the purpose of cheating. The offence is complete as soon as there was forgery with a particular intent.*

369. *Section 471 deals with using as genuine a forged document. For the purpose of convicting an accused under Section 467 read with Section 471 IPC, it has to be shown that an accused either knew or has reason to believe that the document was forged.*

370. *Section 463 defines forgery and Section 464 deals with making a false statement. Section 463 reads as follows:*

"463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

371. *In order to constitute forgery, the first essential is that the accused should have made a false document. The false document must be made with an intent to cause damage or injury to the public or to any class of public or to any community.*

372. *The expression "intent to defraud" implies conduct coupled with an intention to deceive or thereby to cause injury. In other words, defraud involves two conceptions, namely, the deceit and injury to the person deceived, that is infringement of some legal right possessed by him but not necessarily deprivation of property. The term "forgery" as used in the statute is used in its ordinary and popular acceptation.*

373. *The definition of the offence of forgery declares the offence to be completed when a false document or false part of a document is made with specified intention. The questions are (i) is the document false, (ii) is it made by the accused, and (iii) is it made with an intent to defraud. If at all the questions are answered in the affirmative, the accused is guilty.*

374. *In order to constitute an offence of forgery the documents must be made dishonestly or fraudulently. But dishonest or fraudulent are not tautological. Fraudulent does not imply the deprivation of property* *or an element of injury. In order to be fraudulent, there must be some advantage on the one side with a corresponding loss on the other. Every forgery postulates a false document either in whole or in part, however small.*

375. *The intent to commit forgery involves an intent to cause injury. A person makes a false document who dishonestly or fraudulently signs with an intent or cause to believe that the document was signed by a person whom he knows it was not signed.*

376. *A false description makes a document of forgery when it is found that the accused by giving such false description intended to make out or wanted it to believe that it was not he that was executing the document but another person."*

15. In ***Mariam Fasihuddin v. State,*** [3] the Hon'ble Supreme Court held as follows:

"22. *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 valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 IPC distinctly defines the term 'cheating'. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as 'cheating' if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.*

23. *It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.*

[3] 2024 SCC OnLine SC 58

***24.** It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss.[2] 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.*

***25.** The term 'property' employed in Section 420 IPC has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "**intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth**." Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.*

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***33.** The offence of 'forgery' under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.*

***34.** There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely : (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.[3]*

35. *The offences of 'forgery' and 'cheating' intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual….."*

16. The Hon'ble Supreme Court observed in ***Radha Pisharassiar Amma v. State of Kerala,***[4] as follows:-

> ***"16.*** *It is by now well-established principle of law that for the offence under Sections 409, 467 and 471, the existence of mens rea (guilty mind) must be proved. It is on record that Respondents 4 to 7 were working as STOs, Devikulam. From the prosecution evidence, it appears that the conspiracy was hatched at Chithirapuram Primary Health Centre. So far with regard to the offence under Section 467 IPC is concerned, there is no evidence to show that the appellants before us, forged a document which purported to be a valuable security. There is also no evidence that the appellants had knowledge of fact that the allotment letter was a forged letter. Again for an offence under Section 409 it must be proved that the person entrusted with the property, or any dominion over property in his capacity as a public servant committed criminal breach of trust in respect of such property as defined in Section 405 IPC. The evidence must show that he dishonestly misappropriated or converted to his own use that property or dishonestly used or dispossessed that property in violation of any direction of law prescribing the mode in which such trust is to be discharged. In the present case, there is no evidence that A-4 to A-7 dishonestly misappropriated or converted to their own use the amount of TA. On record it is established that A-4 to A-7 are not the beneficiaries of the misappropriated amount."*

17. In ***Vishal Noble Singh v. State of U.P.,***[5] the Hon'ble Supreme Court held the following:-

> ***"18.*** *In this regard, our attention was drawn to paras 42-44 and 46 of Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, dealing with Sections 420 and 467 IPC, which are extracted hereunder with regard to Section 420 IPC, it was observed thus:*
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> *"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person.*

[4] (2007) 13 SCC 410
[5] 2024 SCC OnLine SC 1680

The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

43. We shall now deal with the ingredients of Section 467 IPC.

44. The following ingredients are essential for commission of the offence under Section 467 IPC:

1. the document in question so forged;

2. the accused who forged it;

3. the document is one of the kinds enumerated in the aforementioned section.

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46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. <u>Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases</u>. In view of the settled legal position, the impugned judgment cannot be sustained."

18. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***[6] the Hon'ble Supreme Court observed as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent

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[6] 1992 SCC(Cri) 426

powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non− cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

19. The averments of the complaint and the statements recorded under Section 161 of the Code of Criminal Procedure and the document as mentioned in the charge-sheet did not reveal that the petitioner induced anyone at the very inception to commit the offence under Section 420 of the Indian Penal Code as discussed above nor did the charge-sheet or the materials in the case diary indicated that the petitioner was involved in any manner in the commission of the offences under Sections 468/471 of the Indian Penal Code.

20. Since the charge-sheet based on the materials on record did not reveal any cognizable offence to have been committed by the petitioner constituted the elements necessary for commission of the offence under Sections 420/468/471/34 of the Indian Penal Code to allow the trial before the Trial Court will result in the process of abuse of law.

21. In view of the above discussions, the proceedings being Charge-sheet No.203/06 dated 30.12.2006 arising out of G.R. Case No.442 of 2006

corresponding to Purbasthali P.S. Case No.204/06 dated 13.10.2006 under Sections 420/468/471/34 of the Indian Penal Code is quashed.

22. Accordingly, the instant criminal revisional application being CRR 3879 of 2011 is allowed.

23. The criminal revisional application being CRR 3879 of 2011 is disposed of.

24. There is no order as to costs.

25. Case Diary, if any, to be returned forthwith.

26. 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.

27. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)