

17.12.2024
Item. 09
BR

CRR 4358 of 2022
Smt. Swapna Chand
-vs-
The State of West Bengal and another

Mr. Pawan Kumar Gupta ,
Mr. Sougata Mitra,
Ms. Sofia Nesar,
Mr. S. Sett,
Ms. Soma Chakraborty,
Mr. Nikhil Gupta,
Mr. Subhadeep Maitra

.. for the petitioner

1. Affidavit of service has been returned with the endorsement "Insufficient address" though the service was being effected at the address given in the petition of complaint.
2. The present revisional application has been preferred praying for quashing of entire proceeding in connection with Complaint Case No. 35 of 2020 under Sections 406/420 of the Indian Penal Code, 1860 and order taking cognizance dated 09.10.2020 pending before the learned Additional Chief Judicial Magistrate, Raghunathpur, Purulia.
3. From the petition of complaint it appears that the parties had a business transaction and subsequently the cheque issued against such

payment by the petitioner herein was dishonoured. The total amount outstanding as alleged is Rs. 1,80,000/-. **The cheque was dishonoured on 28.01.2020. The petition of complaint has been filed on 10th October, 2020.** No proceedings under Section 138 N.I. Act was initiated as the period to proceed under Section 138 of the Negotiable Instruments Act had expired. The complainant then initiated the present complaint case.

4. The Hon'ble Supreme Court in ***Lalit Chaturvedi vs. State of U.P, Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of 2023)***:

“5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.

6. In “*Mohammed Ibrahim v. State of Bihar*”, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied:—

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to

consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

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

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari Lal Bhagwati v. CBI”, “Indian Oil Corporation v. NEPC India Ltd.”, “Vir Prakash Sharma v. Anil Kumar Agarwal” and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain”.

10. The charge sheet also refers to Section 406 of the IPC, but without pointing out how the ingredients of said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of

cheating and criminal breach of trust simultaneously. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The chargesheet does refer to Section 506 of the IPC relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us, that these allegations of threats etc. have been made only with an intent to activate police machinery for recovery of money.

11. *It is for the respondent no. 2/complainant – Sanjay Garg to file a civil suit. Initiation of the criminal process for oblique purposes, is bad in law and amounts to abuse of process of law.”*

5. It appears that the present (criminal) case has been initiated to recover the outstanding dues from the petitioner herein. The payment against which was to be made by the cheque which was dishonoured.
6. Thus the dispute is prima facie is civil in nature and to recover outstanding dues civil Court is to be approached.
7. **CRR 4358 of 2022 is allowed.**
8. The proceeding being Complaint Case No. 35 of 2020 under Sections 406/420 of the Indian Penal Code, 1860 and order taking cognizance dated 09.10.2020 pending before the learned Additional Chief Judicial Magistrate, Raghunathpur, Purulia, **is hereby quashed in respect of the petitioner Swapna Chand.**

9. Interim order, if any, stands vacated.
10. Let a copy of the order be sent to the learned trial Court for compliance.
11. Appearance of the Investigating Officer is dispensed with.
12. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)