

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1463 of 2020

With

CRAN 2 of 2023

Nikunj Keyal @ Nikunja Sanjay Kayal

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Navanil De,
Mr. Subhamay Dewanji.

For the State : Mr. Madhusudan Sur, Ld. APP,
Mr. Dipankar Paramanick.

For the Opposite Party No. 2 : None.

Hearing concluded on : 16.01.2024

Judgment on : 07.02.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceeding in connection with Park Street Police Station Case No. 58 dated March 14, 2020 under Sections 420/406/425/120B of Indian Penal Code now pending before the Court of the Learned Chief Metropolitan Magistrate, Calcutta.

2. FACTS:-

The petitioner's case is that on March 12, 2020 the opposite party no. 2 herein filed a complaint before Park Street Police Station alleging inter alia that she being the widow and the legal heir of her deceased husband namely Late Dr. Vijay Pahwa is entitled to receive a sum of Rs. 46,98,800/- from the petitioner and his mother namely Seema Keyal. It is stated in the FIR that the husband (since deceased) of the complainant advanced a sum of Rs. 25,00,000/- as loan to the father of the petitioner namely, Late Sanjay Kumar Keyal (now deceased) by way of a cheque being no. 904490 drawn on Standard Chartered Bank, Chowringhee Branch, Kolkata. It is also stated in the FIR that the said amount of loan was to be repaid by father of the petitioner along with 9% interest accrued thereupon on quarterly basis. In the year 2017, Sanjay Kumar Keyal expired and as a successor-in-interest of the said Late Sanjay Kumar Keyal, the petitioner and his mother had continued to pay 9% over the loan amount taken by Late Sanjay Kumar Keyal till September

27, 2018. Subsequently the petitioner stopped payment though, along with interest the complainant was yet to receive Rs. 46,98,800/-.

3. The petitioner further states that since his father has expired in the year of 2017, the liability of the petitioner as a successor-in-interest does not arise and as such he has no existing liabilities in a criminal proceedings and if any liability remains, remedy lies in the civil court.
4. Hence the revision.
5. It is submitted by the petitioner that the Learned Chief Metropolitan Magistrate at Calcutta while taking cognizance ought to have taken into consideration that the loanee namely Late Sanjay Kumar Keyal has passed away in November 2017 and subsequently the loaner expired on June 06, 2019 and thus the impugned proceeding is not maintainable in the eye of law, being not in conformity with law.
6. It is further submitted that Section 420 of the Indian Penal Code 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. In the instant case neither the petitioner has received any property nor the petitioner has deceived anyone for delivery of any property and as such the impugned proceeding is liable to be set aside.
7. That, before a person is said to have committed criminal breach of trust within the meaning of Section 406 of the Indian Penal Code, it must be

established that he was either entrusted with or entrusted with dominion over property which he has said to have converted to his own use. It must be further shown that such dominion was the result of entrustment. In the present case the complainant's husband never entrusted the petitioner with any valuable security.

8. FINDINGS:-

The FIR/Charge Sheet in this case has been filed under Sections 420/406/425/120B of IPC.

9. The petitioner has relied upon the ruling in ***S.K. Alagh vs State of Uttar Pradesh and Ors., (2008) 5 SCC 662.***
10. Admittedly in the year 2004, the father of the petitioner/accused took loan from the husband of the opposite party no. 2/de facto complainant.
11. The petitioner's father died in 2017. The complainant's husband died in 2019. The loan was a transaction between the predecessors of the parties and not between the parties in the present case.
12. After the death of their father, the petitioner paid a sum of Rs. 75,000/- to the husband of the complainant, after speaking to him. Thus the petitioner denies the claim of the complainant.
13. **The petitioner is not the borrower and the complainant is also not the lender.**
14. **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."*

15. 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."*

16. In the present case, there has been no entrustment of any property in favour of the petitioner by the complainant and as such the act of dishonestly misusing the property does not arise.

17. Section 420 of the Indian Penal Code, lays down:-

"420. Cheating and dishonestly inducing delivery of property.—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 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.

Ingredients of offence.— *The essential ingredients of the offence under Sec. 420 are as follows:-*

(1) There should be fraudulent or dishonest inducement of a person by deceiving him;

(2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced to do anything which he would not do or omit if he were not so deceived, and

(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are –

(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and

(B) Inducing the person deceived to part with property.”

18. In *Deepak Gaba & Ors. vs State of Uttar Pradesh & Anr. (Supra)*,

the Court further held:-

“16. *In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of cheating under Section 415 of the IPC, 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 415 of the IPC is “fraudulence”, “dishonesty”, or “intentional inducement”, and the absence of these elements would debase the offence of cheating. Explaining the contours, this Court in Mohd. Ibrahim and Another v. State of Bihar and Others, 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.”

19. In the present case, the ingredients required to constitute an offence under Section 420 IPC is also clearly absent as there was no inducement by the petitioner for the delivery of property.

20. Section 425 of I.P.C., lays down:-

“425. Mischief.-Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

Explanation 1.— It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.— Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Essential ingredients.— The following are the essential ingredients for an offence of mischief under sec. 425:-

- (i) *intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or any person;*
- (ii) *causing destruction of some property or any change in the property or in the situation thereof; and*
- (iii) *the change so made destroying or diminishing the value or utility or affecting it injuriously - Indian Oil Corpn. v NEPC (2006) 6 SCC 736: AIR 2006 SC 2780."*

21. In *Kashiben Chhaganbhai Koli vs State of Gujarat, Criminal Appeal No. 1967 of 2008 (arising out of SLP (Crl.) No. 1246 of 2008)*, on 4 December, 2008, the Supreme Court held:-

*"11.So far as Section 427 is concerned, the expression "mischief" has been defined in Section 425 IPC to mean an act done with **intent to cause or knowing** that it is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property etc....."*

22. There is also no 'Mens rea', as the petitioner was admittedly not a party to the disputed loan transaction.

23. In *Jay Shri & Anr. vs State of Rajasthan, in Criminal Appeal No. of 2024 (arising out of SLP (Crl.) No. 14423 of 2023)*, on 19th January, 2024, the Supreme Court held :-

"Prima facie, in our opinion, mere breach of contract does not amount to an offence under Section 420 or Section 406 of the Indian 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."

- 24. Thus the dispute in this is clearly a civil dispute regarding outstanding payments (if any), as the parties in this case were not even parties to the loan transaction.** Whether or not any loan amount is outstanding is a matter for the Civil Court to decide.
- 25.** As such the present criminal proceeding against the petitioner is nothing but an abuse of the process of law.
- 26. CRR 1463 of 2020 is accordingly allowed.**
- 27.** The proceedings in connection with Park Street Police Station Case No. 58 dated March 14, 2020 under Sections 420/406/425/120B of Indian Penal Code now pending before the Court of the Learned Chief Metropolitan Magistrate, Calcutta **is hereby quashed in respect of the petitioner Nikunj Keyal @ Nikunja Sanjay Kayal.**
- 28.** All connected applications, if any, stand disposed of.
- 29.** Interim order, if any, stands vacated.
- 30.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 31.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)