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Ct. No. 3

In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction

C.R.R. 88 of 2024
With
IA No. CRAN 1 of 2024

Narayan Pandit & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Sabir Ahmed
Mr. Hillol Saha Poddar
Mr. Mousumi Das **...For the Petitioners.**

Mr.Nilay Chakraborty, Ld. APP
Mr. Arjun Chowdhury **...For the State**

Mr. Sourav Ganguly
Mr. Gopal Roy
Mr. Rishita Chakraborty **...For the Opposite Party No. 2**

Petitioner herein has preferred this application with a prayer for quashing of proceeding being G.R. case no. 3998 of 2023 pending before the learned Judicial Magistrate 1st Court, Siliguri which has arisen out of Matigara Police Station case no. 855 of 2023 dated 20th October, 2023 under Sections 406/420/506/34 of the Indian Penal Code.

The main grievance ventilated in the written complaint is that defacto-complainant/opposite party no.2 herein who is proprietor of an Architectural Consultancy Firm had entered into a contract with petitioner no.2, Smt. Subrata Pandit for construction of a house and as per contract petitioner was agreed to pay Rs. 10

lakhs in advance before starting construction and Rs. 5 lakhs in every months within first week of the month and Rs. 15 lakhs for each slab casting which shall be payable before 15 days of each slab casting. Accordingly total cost stands as on date is Rs. 1 crore 5 lakhs, out of which said Smt. Subrata Pandit paid Rs. 72 lakhs 70 thousands only and when the outstanding amount of Rs. 32 lakhs 30 thousand was demanded she refused to pay the same and on the contrary threatened with consequences and also threatened to file false and fabricated cases against complainant.

Mr. Poddar, learned Counsel appearing on behalf of the petitioner submits that the present dispute is purely civil in nature and if the present proceeding is allowed to be continued that would amount to the abuse of process of Court. In fact opposite party no.2 on 26.09.2023 had sent a legal notice seeking specific performance of contract and payment of due amount. Said opposite party no.2 again sent a letter on 01.10.2023 and 15.10.2023 seeking payment of due amount. Thereafter on 07.11.2023 opposite party no.2 wrote letter to Assistant Labour Commissioner seeking payment of Rs. 32,30,000/-.

Mr. Poddar further submits that from the correspondences it is palpably clear that the allegation basically is that petitioner did not progress the construction work as per agreement and delayed the matter on several pretexts and as per agreement petitioner did not provide proper statement of account with respect to the expenses. Mr. Poddar accordingly submits that in the present case no act or action has fulfilled the ingredients of offence under Section 420 or 406 of IPC and the private opposite party has specific civil remedies before appropriate forum and accordingly he has prayed for quashing of the proceeding. In this context, he relied upon judgements reported in :

I. Paramjeet Batra Vs. State of Uttarkhand & Ors. (2013)11 Supreme Court Cases 673.

II. Naresh Kumar and Anr. Vs. State of Karnataka & Anr.

2024 Online SC 268.

III. Sarabjit kaur Vs. State of Punjab & Anr. (2023) 5 Supreme Court Cases 360.

Mr. Ganguly, learned Counsel for the opposite parties submits that from the correspondence as well as from the counter case filed by the petitioner/accused it would reveal that in spite of work done they are willfully and negligently did not make payment as per the agreement. Accordingly the present case clearly attracts Sections 420 and 406 and 506 of the Indian Penal Code against the accused persons. He further stated that unless the parties face the trial, it would be too early to conclude that the allegations levelled against the petitioners have got no substance or does not attract criminality.

Mr. Chakraborty, learned Counsel appearing on behalf of the State placed the Case Diary and he has pointed out statements recorded by I.O. during the investigation under Section 161 of the Cr. P.C. and contended that from the statements, it is clear that Ranjit Ghosh raised bill of Rs. 1 crore 5 lakhs for the work done by him, for the last 10 months out of which petitioner Smt. Subrata Pandit paid Rs. 72 lakhs 70 thousands and in spite of several reminders she refused to make payment of the rest amount and said Subrata Pandit and her husband threatened the complainant with consequences. Accordingly it is also submitted on behalf of the State that the trial should proceed in order to reach definite conclusion as to whether the petitioners are guilty of committing offence under Sections 420/ 406/ 506/34 of Indian Penal Code or not and accordingly he also submits in the same tune that petitioners prayer for quashing the proceeding should be rejected.

I have considered the submissions made by the parties. Entire allegations levelled against petitioners is that they have failed to honour the agreement. Furthermore the legal notice dated 29.9.2023 issued by opposite party no.2 seeking specific performance of contract and other correspondences and FIR itself makes it clear that opposite party lodged the complaint claiming his dues under the contract. In view of the contents of the First Information Report and other materials in the case diary it is quite clear that according to FIR maker admittedly there was an agreement between the parties. The total cost allegedly incurred is Rs. 1 crore 5 lakhs, out of which admittedly petitioner have paid Rs. 72 lakhs 70 thousands. However, according to First Information Report, Rs. 32 lakhs 30 thousands have not been paid in spite of several demands.

There is no quarrel with the proposition of law that a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. It is equally well settled that while exercising jurisdiction under Section 482, the High Court should not ordinarily embark upon enquiry into whether there is reliable evidence or not and such jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution.

However it is required to be noted in the present context that there is no specific allegation and/or averments in the FIR and/or even in the charge sheet that fraudulent and dishonest intention of the accused persons was from the beginning of the transaction i.e. at the time of entering into contract. Here according to prosecution case parties entered into a valid development agreement but the grievance of the complainant is that the petitioners failed to discharge their contractual obligations. It is matter of common sense, when petitioners honestly entered into contract and made substantial payment, it deemed to represent that petitioners herein had the intention of carrying it out but if having accepted agreement involved in the transaction he fails to make part payment in terms of agreement he does not necessarily evade the payment by deception.

Underpayment in connection with the agreed construction work, as happened in the present case, does not amount to commission of an offence of cheating or criminal breach of trust. It is now well settled that the distinction between mere breach of contract and the offence of cheating is fine one and it depends upon the intention of the accused at the time of inducement which may be judged by this subsequent conduct. Here petitioners subsequent conduct shows that they have made substantial payment and at least no dishonest intention is shown right at the beginning of the transaction. Mere failure to pay any outstanding amount if any, from their part in terms of contract at a subsequent stage does not establish culpable intention right at the beginning and it cannot be presumed from such subsequent conduct that they had criminal intention at the beginning. Here no allegation has been levelled that they had the intention to cheat complaint from the very inception. What has been alleged in the complaint and also what reveals from case diary, relate to subsequent conduct. Only because petitioners failed to make payment of any alleged due amount in term of contract, that by itself would not mean that they had cheated the complaint.

Similarly law clearly recognizes a difference between simple payment of money and entrustment of money in property. A Mere breach of agreement does not ipso facto constitute the offence of criminal breach of rust contained in section 405 of IPC, without there being clear case of entrustment. In the present context there is nothing in the complaint or in the case diary, pointing to the fact that any property was entrusted to the petitioners at all which they dishonestly converted for their own use to satisfy ingredients of section 405 of IPC.

Accordingly even if all the facts in the complaint and materials are taken on their face value, no such dishonest representation or inducement could be found or inferred. This is merely an attempt to criminalize breach of contract, if any. It has been settled in various judgments that the legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducement which resulted in involuntary and inefficient transfers under section 415 IPC.

The allegation leveled under section 506 which primarily based on allegation of cheating and criminal breach of trust is also evasive in nature and materials collected during investigation does not satisfy ingredients of criminal intimidation as required under section 503 of IPC.

There is no factual foundation of the allegation of initial deception and allegation in FIR relates to petitioners' subsequent failure to keep his promise by not paying balance amount, even though according to complainant part of work has already been completed. The basic facts constituting offence, i.e. initial deception by way of false representation on the part of accused at the out set, has neither expressly stated nor otherwise suggested in FIR nor appear from materials in C.D. When a part payment has already been made it cannot be said that there was no intention to pay right from the beginning. Thus initial deception which is the basic ingredients of the offence of cheating conspicuously absent in this case. Criminal Proceedings are not a short cut of other remedies available in law.

In such view of the matter the continuation of the present proceeding will be sheer abuse process of Court. No fruitful purpose will be yielded in continuance of the present proceeding any further. Therefore, I find sufficient material to invoke the inherent power under Section 482 of Cr.P.C. so as to quash the proceeding.

In such view of the matter the present proceeding being Matigara Police Station case no. 855 of 2023 dated 20th October, 2023 under Sections 406/420/506/34 of the Indian Penal Code is hereby quashed. However, this quashing of the proceeding will not prevent the opposite parties to ventilate his grievance before the appropriate Court of Law for realization of arrear amount, if any.

Accordingly, CRR 88 of 2024 is allowed.

The application being CRAN 1 of 2024 is consequently disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)