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Ct. No. 3

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

**C.R.R. 140 of 2024**
**Mohan Prasad**
**Vs.**
**Shyam Sundar Bansal**

***Mr. Deborshi Dhar***
***Mr. Rahul Agarwal*** ***…For the Petitioner***

Affidavit-of-service filed on behalf of the petitioner is taken on record. In spite of service, opposite party is not represented.

Petitioner herein has prayed for quashing the complaint case, being CR Case No. 395 of 2022 under Sections 406/420/422 of the Indian Penal Code, which is presently pending before the learned Judicial Magistrate, 4th Court at Siliguri.

Petitioner contended that the aforesaid complaint case has been filed by the complainant/opposite party No. 2 herein contending that the complainant after accepting the proposal of petitioner/accused person had entered into a business relationship with him and according to the complaint, complainant had supplied goods to the petitioner / accused person as per the order placed by him in cash as well as on credit and the last business transaction was on 13th October, 2016. His further allegation in the complaint is that in lieu of such business transaction there is an outstanding sum of Rs. 6,78,043/-. The complainant has requested the accused person several times personally and through emissaries to repay the aforementioned outstanding amount and the accused person had promised to make the payment several times but he has failed to keep his promise. He further alleged in the complain that the petitioner herein had entered into a written agreement with the complainant on 17.10.2017, in presence of witnesses wherein petitioner/accused person had acknowledged his debt and had promised to repay the outstanding amount to the complainant but despite the said assurance given by the accused, he has failed to repay the said outstanding amount of Rs. 6,78,043/-. Due to such inordinate delay by the accused person in making payment of the aforesaid outstanding amount of a sum of Rs. 6,78,043/-, the complainant is compelled to believe that the accused has dishonestly induced the complainant to deliver goods to him with a fake promise of making the payment. It is further alleged that the petitioner had misappropriated the aforesaid goods supplied and/or entrusted by complainant to the accused person for his own purpose. It is also stated that the complainant thereafter, finding no other alternative issued a legal notice to the accused person through his Advocate on 21.8.2021 requesting him to pay outstanding sum of Rs. 6,78,043/- along with 18% interest within 15 days of receipt of the said notice, but petitioner failed to act in terms of notice, which compelled him to lodge the complaint.

Mr. Deborshi Dhar, learned Counsel appearing on behalf of the petitioner/accused person submits that from the aforesaid facts and circumstances of the case, it is palpably clear that there exists a long standing business relationship between the parties. He further submits that the allegations made in the FIR are absurd and inherently improbable and not in favour of initiation of a criminal proceeding against the accused/petitioner. Such proceeding has been initiated by the opposite party/complainant for wreaking vengeance on the accused petitioner in abuse of process of law.

He further submits that it is palpably clear from the documents annexed with the present application that there has been a consensus with regard to the execution and existence of a written agreement dated 17th October, 2017 whereby the petitioner/accused had acknowledged the said debt and had promised to repay the outstanding amount to the complainant and accordingly the parties are strictly bound by the nature and terms of the agreement and cannot take any recourse beyond the ambit of agreement by putting colour of criminality in a civil dispute.

He further submits that neither Section 406 or Section 420 of the Indian Penal Code attracts in the present context as the petitioner never dishonestly induced the opposite party to deliver any property nor there was any entrustment of any property of the opposite party upon the petitioner nor there is anything to show that petitioner dishonesty or fraudulently preventing debt being available for creditors.

Accordingly, petitioner has prayed for quashing the aforesaid proceeding.

Learned Counsel for the petitioner in order to buttress his argument referred the decision of the Hon'ble Apex Court in the case of ***International Advanced Research Centre For Powder Metallurgy and New Materials (ARCT) & Ors. Vs. Nimba Serglass Technics Pvt. Ltd. & Anr.***, reported in **(2016) 1 SCC 348**.

I have considered the submissions made on behalf of the petitioner and also perused the documents annexed with the present application. It is not in dispute in the present context that the parties have entered into an agreement on 17.10.2017. Prior to that several transactions took place between the parties. However on 21st August, 2021, the complainant/opposite party had sent a letter to the accused/petitioner demanding for payment of an outstanding amount of Rs. 6,78,043/-, of which the petitioner accused has given reply on 13th September, 2021 wherefrom it also discloses that the business transaction between the parties is going on for last 25 years and the transactions were made on both credit and cash. Further, the petitioner/accused, in his reply, had taken a plea that he had noticed that the price of goods, as mentioned by the complainant and the market price are completely different and the complainant has charged higher price as compared to other dealers around the same market which is at a difference of about Rs. 30/- to Rs. 40/- for small product and Rs. 100/- to Rs. 250/- for shoe product and for which he has withheld payment. However, in the last portion of the said letter, the petitioner/accused invited the complainant that in compliance of Clause 4 of the said agreement, he should visit the petitioner's shop to calculate the exact amount, which he promised to deduct and he specifically stated in paragraph 21 of his reply that the complainant desires to settle the matter amicably by fixing a meeting between themselves and by bringing all past transaction record bills. It further appears that in spite of said letter, petitioner has taken shelter of criminal Court which clearly discloses that what might be a breach of contract between the parties, complainant herein has tried to criminalize it and criminal liability has been foisted on the accused /petitioner only with an intention to get speedy remedy for breach of contract which should have been the subject matter of a civil Court.

Mere breach of terms of such agreement dated 17.10.2017 does not give rise to criminal prosecution unless fraudulent or dishonest or malafide intention on the part of the petitioner right from the beginning of the transaction is shown by the opposite party. It may be that petitioner has failed to pay balance consideration in terms of said agreement, which can give rise to civil action but by no means the allegations made out in the complaint satisfies the essential ingredients of any offence far from offence under section 420 or 406 or 422 of IPC. In ***India Oil Corporation Vs. NEPC India Ltd.*** reported in **(2006) 6 SCC 736** the Apex Court deprecated and discouraged such practice of entangling a person in a criminal prosecution with an evil motive of imminent settlement, in case where dispute purely civil in nature and does not involve any criminal offence, on a prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of the lenders/creditors.

In the present case admittedly parties had longstanding business relationship and there was no allegation of cheating or criminal breach of trust prior to the present agreement there is no specific allegation in the complaint that fraudulent or dishonest intention of the accused persons was from the beginning of the transaction. Here petitioner honestly entered into a valid agreement but having accepted terms of agreement involved in the transaction, if petitioner fails to make payment in terms of agreement, he does not necessarily evade the payment by deception, nor it amounts to an offence of cheating or criminal breach of trust.

It is well settled that the distinction between mere breach of agreement 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 his subsequent conduct. Mere failure to pay in terms of agreement, if any, does not establish culpable intention right at the beginning and it cannot be presumed that since he failed to make payment in terms of agreement, he had intention to cheat complainant from the very inception.

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 trust contained in section 405 of IPC without there being clear case of entrustment. Here nothing in the complaint suggest that any property was entrusted to the petitioner, which he dishonestly converted for his own use to satisfy ingredients of section 405 of IPC.

Accordingly even if contents of complaint is taken on their face value as gospel truth, no such dishonest representation or inducement could be found or inferred. This is merely an attempt to criminalize alleged breach of contract. It is settled law that legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest, deceptive inducement and resulted in involuntary transfer under section 415 of IPC. Section 422 of IPC has been put merely to make the allegation weighty, without making any specific allegation in the complaint, which can constitute such offence. It is to be remembered that criminal proceedings are not a shortcut of civil remedies available in law.

In such view of the matter, from the contents of the complaint as well as from the documents annexed with the complaint, I find that the complaint does not disclose any offence far from offence under Sections 406/420/422 of the Indian Penal Code.

In such view of the matter, C.R.R. 140 of 2024 is allowed.

The proceeding, being CR Case No. 395 of 2022 under Sections 406/420/422 of the Indian Penal Code, presently pending before the learned Judicial Magistrate, 4th Court at Siliguri is hereby quashed.

Urgent photostat certified copy of this, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

***(Ajoy Kumar Mukherjee, J. )***