

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 163 of 2024

**Sri Babu Saha.
Vs.
The State of West Bengal & Anr.**

For the petitioner	:	Mr. Amalesh Roy Mr. Deborshi Dhar
For the State	:	Mr. Aditi Shankar Chakraborty Mr. Ujjwal Luksom
Heard on	:	13.08.2024
Judgment on	:	19.08.2024

Ajoy Kumar Mukherjee, J.

1. This application under section 482 of the Code of Criminal Procedure pertains to a prayer made by the petitioner for quashing of the criminal proceeding being Mekhliganj Police Station Case no. 296 of 2022 dated 04.09.2022 under section 420 and 406 of the Indian Penal Code corresponding to GR Case no. 648 of 2022, pending before learned Additional Chief Judicial Magistrate, Mekhliganj, Cooch Behar.

2. Petitioner contended that the petitioner is an exporter and importer. He use to export various items in Bangladesh through the customs barrier at Changrabandha within the jurisdiction of Mekhliganj P.S. On negotiation

the opposite party no. 2 supplied about 100 tons corn to the petitioner at the rate of Rs. 20/- per kg. and on account thereof the petitioner paid Rs.19,50,000 /- to the opposite party on different dates.

3. In the complaint it has been alleged that on the basis of assurance from the petitioner the opposite party no. 2 sent corn loaded in six lorries having the total weight of 1100 kg. at the rate of Rs. 22.50/- per kg. to the petitioner on 03.06.2022 and it has been further alleged that the total price of corn is Rs. 40,63,275/- and out of which the petitioner paid only Rs. 12,50,000/-.

4. Petitioner argued that as per FIR the alleged offence took place on 03.06.2022 but the complaint was lodged on 04.09.2022. After completion of investigation police submitted charge sheet on 28.02.2023. Being aggrieved by the same Mr. Roy learned counsel appearing on behalf of the petitioner further argued that the quantum of corn and the price of the corn have not been ascertained in the charge sheet by the investigation officer after completion of investigation. In the FIR complainant/opposite party no. 2 alleged that he supplied 1100 kg. of corn at the rate of Rs. 22.50/- on 03.06.2022 but the price of corn mentioned as Rs. 40,63,275/-. He further stated that though in the FIR it has been stated that petitioner paid only Rs. 12,50,000/- but it is evident from bank details that petitioner already paid Rs.19,50,000/-. He therefore disputed the exact quantum of corn supplied to the petitioner and also the exact price of corn supplied and amount paid therein. He further submits that to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time

of making the promise. Such ingredient for commission of offence are conspicuously absent in the FIR.

5. He further argued that to constitute an offence under section 406 of the Indian Penal Code the essential ingredient is the “entrustment of the property”. In the present case it cannot be established that the opposite party no. 2 supplied (entrusted) the specific quantum of corn and the petitioner did not pay its price at a fixed rate. On the contrary on a reading of the FIR, charge sheet and the materials collected during investigation, it is very much clear that the present criminal proceeding has been launched with an ulterior motive for wrecking vengeance on the petitioner and with a view to spite the petitioner due to private and personal grudge. The materials available so far does not disclose any offence against the petitioner either under section 420 or under section 406 of the IPC. In such view of the matter the continuance of further proceeding before the court below would be an abuse of process of law and as such he has prayed for quashing of the said proceeding.

6. Mr. Luksom learned counsel appearing on behalf of the state placed the case diary and in his usual fairness he submits that the witnesses have stated during investigation that the petitioner has received corn amounting to Rs. 40,63,275/- out of which petitioner Babu Sahs has paid only Rs. 12,50,000/- and inspite of several demand he has not paid rest amount, which is apparently a civil dispute between the parties.

7. I have considered submissions made by both the parties. Supreme court in various judgments has clearly pointed out that there is a distinction between a civil wrong in the form of breach of contract, non-payment of

money or violation of the contractual terms with that of criminal offence under sections 420 and 406 of the Indian penal code. There is no quarrel with the proposition of law that a given set of fact can make out a civil wrong as well as criminal offence and merely because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding.

8. However mere inability of the petitioner to pay the alleged due amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction as *mens rea* is the crux of the offence. In the present context on a bare perusal of the FIR it is clear that there is no specific allegation or averment in the complain or even in the charge sheet that fraudulent or dishonest intention of the accused was from the very beginning of the transaction. On the contrary FIR discloses that on 01.06.2022 the accused purchased 30 tons of corn from the complainant and he paid Rs. 50,000/- through banking system and thereafter again accused purchased some more corn on 03.06.2022 which according to the FIR maker is valued at Rs. 40,63,275/- and out of said amount the accused allegedly paid only Rs. 12,50,000/- and further allegation is though as per agreement accused/petitioner was supposed to pay rest amount of Rs. 23,12,275/- within a week but the accused/petitioner has allegedly declined to pay the same.

9. Mr. Roy on behalf of the accused/petitioner, in this context has disputed the value of corn as assessed by the complainant and in support of the same he wants to rely upon certain documents. However fact remains that if it was the intention of the accused/petitioner to cheat the

complement/opposite party herein at the very inception of the business transaction, then he would not have made payment of entire amount for the first transaction and thereafter to make alleged part payment in respect of the present transaction. In any case there are no specific allegations and averments in the FIR that the petitioner had fraudulent or dishonest intention at the time of entering into the contract.

10. It is well settled in view of ***Vir Prakash Sharma Vs. Anil Kumar Agarwal and another*** reported in **(2007) 7 SCC 373** that non-payment or under payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. at the time when the offence is said to have been committed. Here even if all the averments made in the FIR are taken to be correct, the case for the prosecution under section 420 or 406 is not made out against the petitioner. There are also authorities which have decided that a person cannot be booked for the same transaction under section 420 and 406 simultaneously.

11. It is the duty of the High Court to ensure that criminal prosecution is not used as an instrument of harassment with an ulterior motive to pressurise accused for recovery of arrear amount. Criminal proceedings are not a short cut of other remedies available in law. The present dispute regarding under payment of corn supplied to the accused petitioner is essentially a dispute of civil nature, of which the complainant has tried to

give a cloak of criminal offence. I do not find any criminal element even on a plain reading of the FIR.

12. It is true that in a number of cases, it has been held that power under section 482 has to be exercised sparingly and in the interest of justice. However allowing a criminal proceeding to continue even where the allegations in the FIR do not make out any criminal offence, would be tantamount to an abuse of the process of court and therefore I have no hesitation to come to a conclusion that this is a fit case where power under section 482 of the code should be exercised, since necessary ingredients of the alleged offences have not been made out against the petitioner /accused. Infact the contention of FIR is vague and it only contains the bald allegation that the accused petitioner has made underpayment in respect of corn allegedly supplied by the complainant to the accused.

13. This being the position the impugned proceeding being G.R case 648 of 2022 pending before learned Additional Chief Judicial Magistrate, Mekhliganj, Cooch Behar is hereby quashed.

14. In view of aforesaid discussion **CRR 163 of 2024** is allowed.

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

(AJAY KUMAR MUKHERJEE, J.)