

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1084 of 2022

Amit Prakash Agarwal
VS.
The State of West Bengal & Anr.

For the Petitioner	: Mr. Anirban Dutta, Mr. Abhijit Sarkar.
For the State	: Mr. Arijit Ganguly, Mr. Anindya Sunder Chatterjee, Ms. Sreemayi Roy.
Hearing concluded on	: 14.01.2025
Judgment on	: 14.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing and/or setting aside of the impugned charge sheet being no. 392/2020 dated 30.11.2020 under Sections 447/448/509/354/323/504/506/34 of the Indian Penal Code, 1860 arising out of Chanditala P.S. Case No. 325 of 2020 dated 22.10.2020 under Sections 427 /447 /448 /509 /354B /323 /325 /504 /506 /120B /34 of the Indian Penal Code, 1860

pending before the Court of the learned Additional Chief Judicial Magistrate at Serampore, Hooghly.

2. The allegations in the petition of complaint filed under Section 156 (3) Cr. PC is as follows:-

*“That the accused persons have nexus with anti-social elements and as the complainant and her family members are poor, so, the accused persons have been terrorizing them time and again and they have been continuously threatening them with dire consequences to **grab the above mentioned property**. That on 12.10.2020 at about 1 p.m. to 1.30 p.m. the accused persons illegally assembled with intention to grab the property at J.L. No. 69, Mouza- Jay Kishnapur, R.S. Dag No. 679, L.R. Dag No. 716, L.R. Khatian No. 2759 (which is still in possession of the complainant) and made criminal trespass. Somehow, the complainant got information and protested their said act and they became violent and intentionally started pushing the complainant. Accused no. 1 Subal Ghorui, disrobed the complainant by tearing her wearing apparels. Accused no. 2 Partha Mal outraged the modesty of the complainant by touching her private parts. The accused no. 1 and 2 assembled with accused no. 3 Amit Prakash Agarwal attacked the complainant with lathi and also hurt her with fist and blows. The accused no. 3 accompanied with some anti-social persons destroyed the fence of the said above mentioned land and also demolished crops and trees such as turmeric, segum, sishu etc. with JCP by which the complaint sustained a loss more or less of Rs. 50,000/- (Rupees Fifty Thousand) only and lodged GDE being no. 692 dated 12.10.2020 before the Chanditala P.S. authority.”*

3. The State has placed the case diary.

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.** In ***Naresh Kumar Vs The State Of Karnataka., Criminal Appeal No. of 2024, (Arising Out Of SLP (Crl.) No. 1570 of 2021), on 12th March, 2024,*** the Supreme Court held as follow:-

“6. *In the case of Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are*

essentially of a civil nature. This is what was held:

*“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.” (emphasis supplied) Relying upon the decision in *Paramjeet Batra (supra)*, this Court in *Randheer Singh v. State of U.P. (2021) 14 SCC 626*, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In *Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90*, relying upon *Paramjeet Batra (supra)* it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.*

7. *Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in *Sarabjit Kaur v. State of Punjab and Anr (2023) 5 SCC 360*. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court,*

in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.

8. In the case at hand, the dispute between the parties was not only essentially of a civil nature but in this case the dispute itself stood settled later as we have already discussed above. We see no criminal element here and consequently the case here is nothing but an abuse of the process. We therefore allow the appeal and set aside the order of the High Court dated 02.12.2020. The criminal proceedings arising out of FIR No.113 of 2017 will hereby stand quashed.”

6. In *Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors.*, 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order

under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent

powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its

jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose

a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika***

Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.

- 7.** The present case falls under category 1, 3 and 7 of ***Para 102 of Bhajan Lal (Supra)***.
- 8.** Considering the materials on record and the case diary, it appears that prima facie there is **a property dispute** between the parties in this case which appears to be **civil in nature**.
- 9.** There are no materials in the case diary to prima facie substantiate the offences alleged against the petitioners in the present case.
- 10.** As such permitting the present case to proceed to trial shall amount to an abuse of the process of law and as such the proceeding in the present case is liable to be quashed.
- 11. CRR 1084 of 2022 is thus allowed.**
- 12.** The proceeding being charge sheet no. 392/2020 dated 30.11.2020 under Sections 447 /448 /509 /354 /323 /504 /506 /34 of the Indian Penal Code, 1860 arising out of Chanditala P.S. Case No. 325 of 2020 dated 22.10.2020 under Sections 427 /447 /448 /509 /354B /323 /325 /504 /506 /120B /34 of the Indian Penal Code, 1860 pending before the

Court of the learned Additional Chief Judicial Magistrate at Serampore, Hooghly, **is hereby quashed in respect of the petitioner namely Amit Prakash Agarwal.**

13. All connected application, if any, stands disposed of.
14. Interim order, if any, stands vacated.
15. Let a copy of the Judgment be sent to the learned trial court at once.
16. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]