

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 818 of 2015

SEKHAR SHARMA

Vs.

STATE OF WEST BENGAL AND ANR.

For the Petitioner : **Mr. Ayan Bhattacharjee, Sr. Adv.**
 Mr. Arpit Choudhury, Adv.
 Mr. Anil Choudhury, Adv.

For the State : **Mr. Imran Ali, Adv.**
 Ms. Debjani Sahu, Adv.

Last Heard on : **19.03.2025**

Judgement on : **04.04.2025**

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application under Section 482 of CRPC for quashing of the proceeding being G.R case No. 35 of 2012 arising out of Hare Street P.S case No. 6 dated January 2, 2012 under section 420 of the Indian Penal Code, 1860 pending before the Court of the learned Chief Metropolitan Magistrate at Calcutta.

Fact of the case

2. Briefly stated, the Case of the petitioner/accused is that Calcutta Chroma Type Private Ltd. a company duly incorporated under the Company having

its registered office at 76/2, Christopher Road, Kolkata 700046, running since 1933. The petitioner is the Managing Director of the said company. The company was in need of paper of a particular size and weight which was not regularly manufactured by any paper mill and was not therefore available freely in the local market.

3. The Opposite Party no.2 KCT Trading Private Limited was dealing in the business of selling papers in the market since long and earned a good repute in the market. The management of Opposite Party no. 2 had approached the Chroma Type Company sometime in July, 2018 for supply of such paper. It was made clear to the Opposite Party no. 2 by the petitioner that the regularity in supply to be paramount since there exists stiff competition in the printing industry, and therefore, the company relied on bulk business. The Opposite Party no.2 accepted such proposal and the company had made payments to the Opposite Party no. 2, every month from October 2010.

4. In April 2011, the company asked the Opposite Party no. 2 for credit notes to settle their accounts vide an email dated 21 April 2011, but the Opposite Party no.2 did not correspond with the petitioner. The petitioner duly informed Mr. Dipanjan Bhattacharya and Mr. Ashok Tandon of the Opposite Party, no.2 /company, about the regular delays and shortages in supply of monthly order on a daily basis over phone, through emails on various dates. During the eight month period from September 2010 to April 2011, the Opposite Party no.2 was to supply 1600 reams of special size paper but only 594; Rims of paper were supplied, resulting in a shortfall of 1006 rims. The huge shortfall had to be made up by the company by purchasing standard

size paper from paper market locally at much higher rates causing huge losses to the petitioner company. Despite informing the Opposite Party, no.2 about the huge losses faced by the company on account of the regular delay on the part of the Opposite Party no.2 only assurances were given to improve their supply, quality and quantity wise. Ultimately, the petitioner company stopped doing business with the Opposite Party no. 2 sometime in April 2011.

5. It is the further case of the petitioner that in or around September, 2013, the petitioner came to learn that he was wanted in connection with the above mentioned criminal case when the police authority informed about the First Information Report registered against him pursuant to the order dated December 12, 2011 passed by the court of the learned Chief Metropolitan Magistrate at Calcutta. The investigating agency also filed charge sheet under Section 420 of the Indian Penal Code, against the petitioner.

6. Being aggrieved by and dissatisfied with the impugned proceedings of GR case number 35 of 2012 arising out of Hare Street Police Station case no.6 dated January 2, 2012, this revisional application has been filed for quashing such proceeding.

Submissions

7. The learned Senior advocate appearing on behalf of the petitioner would submit that the allegations levelled in the first information report suffer from antagonistic contradictions and inherent absurdity. The essential ingredients to attract this provision under Section 420 IPC are absolutely missing and the distinction between a breach of contract and offence of cheating being

the intention of the accused at the time of inducement is absolutely missing. A breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent dishonest intention is shown at the beginning of the transaction. It is further argued that the offence alleged in the instant case filed by the Opposite Party no.2 under Section 406 and 420 of the Indian Penal Code, where under no specific liability is imposed on the officers of the company and in absence of specific details about the same; no person other than the company can be prosecuted. It is submitted that the instant proceeding as initiated against the present petitioner is absolutely baseless, frivolous, and displaces a clear misuse of the provisions of criminal law and fails to disclose any commission of offence by the petitioner. More so the attempt has been made by the opposite party number 2 to give a colour of criminal proceeding, which is absolutely a civil dispute and could, have been filed by the Opposite Party no. 2, at least against the petitioner for recovery of the amount paid to the company of the petitioner. It is further argued that the company against whom the allegation has been primarily levelled has not been arraigned as an accused which is mandatory and on that score itself the proceeding should be quashed. Furthermore the Learned Magistrate ought not to have forwarded the complaint to the Police Authorities for investigation.

8. The learned Senior advocate cited decisions reported in **(2024) SSC online SC 171 (Lalit Chaturvedi, and others versus State of Uttar Pradesh)** and other, where the clear distinction between a civil wrong in the forum of breach of contract, non-payment of money, or disregard to valuation of the contractual terms, and a criminal offence under Section 420

and 406 of the Indian Penal Code has been shown. The learned advocate further cited the following decisions;

(2007) 7SCC 373 (Vir Prakash Sharma versus Anil Kumar Aggarwal,

(2024) 10 SCC 690, Delhi race club(1940) Ltd versus state of UP,

(2019) 9 SSC 148(Satish Chandra Ratan Lal Shah versus state of Gujarat),

2024 SCC online 9834 (Prem chand Jain and another versus the state of West Bengal and another),

(2005) 10 SCC 336, Uma Shankar Gopalika v State of Bihar and

(2015) 12 SCC 781 Sharad Kumar Sanghi v Sangita Rane in support of his argument.

9. Per contra the case of the prosecution is that the proceeding before the trial court started on the basis of an application under Section 156 (3) of the Code of Criminal Procedure filed by the present Opposite Party no.2 KCT trading Private Limited against the present petitioner. The contention of the complainant is that the KCT trading Private Limited being a company duly incorporated under the Companies Act, 1956 having at its registered office at Tapper house, 25 Brabourne Road, Police Station Hare Street, Kolkata, used to deal with business of selling papers of various types in the market since long and earned a good repute in the market in the field. On being approached by the company of which the present petitioner is the Managing Director, for establishing a business relationship, the Opposite Party no. 2 agreed on specific terms that there would be a business on no credit basis. The company further agreed to abide by the conditions of payment. The present Opposite Party no.2 also agreed to supply materials to the accused

as per his requirement on credit. The accused assured the complainant about the payment within a short time by issuing cheque against the supply and delivery of materials in question. Accordingly on and from 30 November 2010, till 22 March 2011, the said company sold, supplied and delivered papers/reams to Calcutta Chroma Private Ltd. as per the requirement and orders of the present petitioner, of an amount of ₹7,19,634 only. The accused duly received the materials so delivered without raising any objection and thereafter accepted the bills raised by the complainant against such supply but later on when for a considerable period of time, no payment came from the accused person against the supplies made, the complainant started demanding money and then all a sudden the accused person started raising his objection regarding the quality of papers. The specific case of the complainant was that the accused and his company never raised objection about the quality of the papers nor returned the material so supplied. The complainant was convinced that the accused person tried to avoid making any payment. They tried to contact with the accused person by sending its representative to his office but found the office under lock and key. The company complainant also came to know that the accused person has closed its business and since May 2011, the complainant never been able to trace out the accused as he avoided the representative of the complainant company by not taking their calls or not meeting them. The complainant after that went to lodge a complaint with the officer in charge of Hare street Police Station, but he was advised to obtain an appropriate order from the court for causing an investigation. Accordingly he had to file the application under Section 156 (3) of Code of Criminal Procedure. The court, vide order

dated 28 December 2011, was pleased to send the complaint to the Hare Street Police station for causing investigation.

10. The argument advanced by the learned advocate appearing on behalf of the State respondent, supporting the case of the Opposite Party no.2 pertains to breach of trust 'as the petitioner being the Managing Director of the company agreed to make payment on receiving supply of the papers and despite receiving the same failed to make any payment, which surfaces out mens rea under Section 420 of IPC. The Learned advocate would further submit that the total amount due was Rs.7,19,634/-and the petitioner though received the papers did not make any payment on the pretext that the quality of the papers were not sufficient and not up to the mark.

11. The petitioner did not return the goods delivered nor made payment which amounts to cheating and the petitioner with an intention to deceive the Opposite Party No.2 did not reply the calls or avoided meeting with the men and agent of the Opposite Party Company. So the Learned court rightly directed the police authorities to investigate and the police authority after complication of investigation filed the charge sheet which prima facie proves the complainant's case and therefore this revisional application suffers from any cogent reason for which any interference is necessary.

Heard the submission of both the learned advocates.

Analysis

12. Having gone through the content of the complaint as well as the argument advanced on behalf of the parties it is quite clear that pursuant to

an agreement between the petitioner and Opposite Party No.2 a business transaction started between them and accordingly some materials were supplied but payment was not made despite repeated demand and the supplied materials also never returned, which certainly amounts to breach of contract. Whether such breach of contract can be termed as breach of trust under Section 406 of IPC or cheating under Section 415 of IPC and thereby liable to be punished under Section 420 IPC is to be dealt with by this court.

13. The Hon'ble Supreme Court in **(2024) 10 SCC 690, Delhi Race Club (1940) Ltd. versus state of UP** referred the relevant paragraphs (9-10) of the decision of the Hon'ble Supreme Court in **S.W. Palanitkar versus State of Bihar, (2002,) 1 SCC 241** observed that *in order to constitute an offence under 406 IPC The following ingredients are necessary;*

1) there must be entrustment with person for property or dominion over the property, and

2) The person entrusted;

a) dishonestly misappropriated or converted property to his own use or

b) dishonest used or disposed of the property or wilfully suffers any other person, so to do in violation of:

i) Any direction of law prescribing the method in which the trust is discharged;

Or

ii) Legal contract, touching the discharge of trust.

14. The **Hon'ble Supreme Court** further quoted the observation made by the Hon'ble Court in **(2009) 7 SCC 712 (Harmanpreet Singh Ahluwalia v.**

State of Punjab) observed that in respect of an offence under section 420 IPC, the essential ingredients are;

- 1) Deception of any person, either by making a false or misleading representation, or by other action or by omission.*
- 2) Fraudulently or dishonestly inducing any person to deliver any property.*
- 3) The consent that any person shall return any property and finally intentionally inducing that person to do or omit to do anything, which he would not do or omit.*

15. In the decision reported in **(2020) 4 SSC online SC 171. (Lalit Chaturvedi and others versus State of Uttar Pradesh and other)** the Hon'ble Supreme Court referred the paragraph 18 of the decision of **Mohammed Ibrahim versus State of Bihar (2009)8 SCC 751** where also, discussed the ingredients which are to be satisfied in order to constitute an offence under Section 420 of Indian Penal Code which includes deception by making a false or misleading representation, or by dishonest concealment or by any other action, omission, fraudulent, or dishonest inducement of the 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 to do anything, which he would not do or omit if he were not so deceived and such an act or omission, causing or is likely to cause damage or harm to that person in body, mind, reputation, or property.

16. The case before the Hon'ble Supreme Court in Lalit Chaturvedi was almost identical like the instant case in hand where the Respondent No.2 /complaint's grievance pertained to failure of the appellant to pay the

outstanding amount, in spite of the repeated demands. The Respondent Number 2/complainant claimed that the supplies were made, between the period first December 2015, and 6 August 2017. The Appellant had made the payments from time to time of ₹3,76,40,553/-leaving a balance of ₹1,92,91,358/-. The Hon'ble Supreme Court observed that *'we will assume that the assertions made in the complaint are correct, but even then a criminal offence under Section 420 with Section 415 of the IPC is not established in the absence of deception by making false and misleading representation, dishonest, concealment, or any other factor, omission, or inducement of the complainant to deliver any property at the time of the contracts being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averment. A prayer is made to the police for recovery of money from the appellant. The police is to investigate the allegations which disclose a criminal act. The police does not have the power and authority to recover money or act as a civil court for recovery of money'*.

17. In the decisions relied upon by the learned Senior advocate of the petitioner reported **in (2005)10 Supreme Court cases 261. (Hotline Tele Tubes and Components Ltd v State of Bihar and another)** the Hon'ble Court dealt with the matter where in the complaint there was no whisper that at the very Inception of the contract between the parties, there was any intention to cheat. The Hon'ble Apex court therefore observed that the case was of a civil liability without disclosing any criminal offences; much less offences either Section 406 or 420 IPC. The prayer of the petitioner

was allowed after setting aside the order of the Hon'ble High Court, which refused to quash the proceeding, considering that allowing such prosecution to continue would amount to an abuse of the process of court and to prevent the same, it would be just an expedient to quash the same.

18. In ***Satish Chandra Ratan Lal Shah versus State of Gujarat and another* (2019)9 SCC 148**, the ingredients for constitution of offences of criminal breach of trust and cheating were clarified. The case before the Supreme Court was failure of Appellant / accused to repay the loan borrowed from Respondent No.2, complainant. The trial court framed the charges under Section 406, 420 and 417 of Indian Penal Code so the petition was filed for quashing which was rejected by the High Court. Taking note of the case of ***Gyan Singh versus State of Punjab*** the Hon'ble Court observed that in a number of cases, the Apex court has usually cautioned against criminalising civil disputes, such as breach of contractual obligations when the legislature intended to criminalise only those branches which are accompanied by fraudulent, dishonest, or deceptive inducements, which resulted in involuntary and inefficient transfers under Section 415 IPC. The Hon'ble Supreme Court was pleased to reverse the order of dismissal of the quashing application by the Hon'ble High Court and the said prayer made under section 482 Cr.PC was allowed and the criminal proceeding instituted was quashed.

19. The learned Senior advocate further relied upon the decision of Hon'ble High Court of Calcutta passed by Justice Ajay Kumar Gupta reported in ***2024 SCC online 9834 in (Prem Chand Jain and another***

versus State of West Bengal and another) where the Hon'ble Single Judge referred the case of **Delhi race club (1940) Ltd versus State of UP (supra)** and also the case of **Lalit Chaturvedi versus State of Uttar of U.P (supra)** and accordingly came to the finding that the ingredients of the offences alleged by the Opposite Party number two in the complaint to attract Section 406/ 420/120B of Indian Penal Code, were totally missing. Merely because payment has not been made or accounts have not been settled, never constitute offence punishable under the above sections more so the dispute between the parties are purely civil in nature and criminal proceeding should not be allowed to be continued any further otherwise it would be sheer abuse of the process of law.

20. In Uma Shankar Gopal versus State of Bihar and another Hon'ble Supreme Court (supra) while examining as to whether on the facts disclosed in the petition of complaint, any criminal offence whatsoever was made out much less offences under Section 420/120 BC, it was observed that *'it is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases, breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.'*

21. Similarly as discussed in **Delhi Race Club (1940) Ltd. vs State of U.P (supra)** the observation made *'there must be some entrustment of property to the accused wherein the ownership is not transferred. In case of sale of movable property, although the payment may be deferred yet the*

property in the goods passes on delivery as per Section 20 and 24 respectively of the Sale of Goods Act, 1930 .Once the property in the goods passes to the purchaser. It cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property there cannot be any criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core'

22. In the decision as relied u[on] by the learned advocate of the petitioner while discussing the scope of enquiry by a Magistrate under section 202 it was observed in paragraph 12 and 13 are as follows;-

12. 'It is by now well-settled that at the stage of issuing process it is not the duty of the court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation'.

13. 'If, however, a bare perusal of a complaint or the evidence led in support of it shows essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only'.

It was further observed in paragraph 24 of the said judgement that

24. *'Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156 (3) or Section 200 CrPC, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Appellants 2 and 3, respectively, herein who are none other than office-bearers of Appellant 1 Company. when appellant 1 is the Company and it is alleged that the company has committed the offence then*

There is no question of attributing vicarious liability to the office-bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned. The office-bearers could be arrayed as accused only if direct allegations are levelled against them. In other Words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practised by the office-bearers.'

Therefore in the given case also while forwarding the complaint the Magistrate failed to apply his mind as to whether prima facie materials exists for forwarding the complaint for further investigation

23. Therefore in view of the slew of judgements of the Hon'ble Supreme Court as well as, of different Hon'ble High Courts there remain hardly any scope to initiate a criminal proceeding under Section 420 or 406 IPC for breach of contract or default in repayment of money against any material received and the complaint must go before the civil court for legal remedy.

24. Section 420 IPC reads as;

Cheating and dishonest inducing the 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 7 years, and shall also be liable to fine.

25. The Latin term *mens rea* means “*guilty mind*” which is an fundamental principles of criminal law and essential elements of criminal Jurisprudence . It comes from the legal maxim ,*actus non facit reum nisi means sit rea* “ which means “the act is not guilty unless the mind is guilty. Therefore for commission of offence of cheating the dishonest intention or the intention to defraud must be shown from the very beginning of the transaction and that is mens rea which is to be proved.

26. In the instant case, the admitted fact appears to be of existence of a business relation between the parties who in agreement with the terms and conditions entered into the business transaction. The complainant company was to deliver the required materials of certain specifications, and the petitioner was to pay the amount in lieu of that. The said transaction started on and from September 2010 and continued till March 2011. It is not the case of the complainant that since the inception of their business transaction, there was any deception on the part of the petitioner or his company, and any inducement done, fraudulently or dishonestly to deliver any property. No allegation was also made that accused company had an intention to cheat the Opposite Party No.2 from the very inception. The complaint was lodged on the basis of the subsequent events when the

petitioner company did not pay the amount after receiving the required materials. The present petition the petitioner has made out his own case about non-fulfilment of the agreed quality and standard of the material by the opposite party, No.2, which resulted in huge losses to the company as they had to purchase the materials from the local market at the much higher rate. Therefore from the entire facts and circumstances it is evident that the dispute can be addressed before the civil court and no case has been made out to attract 420 IPC.

27. The second limb of argument of the petitioner is despite raising allegation against the Calcutta Chroma Company the company has not been arraigned as an accused in the petition of complaint and on that score also the criminal case initiated on the strength of the complaint should be quashed. On this point the learned advocate cited one decision of Hon'ble Supreme Court reported in **(2015) 12 SCC 781 (Sharad Kumar Sanghi v Sangita Rane)** where the complaint was lodged against the Managing Director of the company for suppression of information regarding the vehicle purchased from the Automobile company and lodged complaint for cheating. The Hon'ble court referring the case of **Aneeta Hada vs Godfather Travels and Tours (P) Ltd (2012) 5 SCC 661** held that *in absence of any specific allegations against the Managing Director where the company has not been arrayed as an accused ,no proceedings can be initiated against it where vicarious liability is fastened under certain statutes . In the given case the company has not arrayed as an accused when the petitioner being the Managing Director has been made an accused*

and obviously the transaction was between the two companies and specific allegations were directed against the company.

Conclusion

28. Be that as it may in view of the catena of decisions of the Hon'ble Supreme Court, mere breach of promise or agreement or contract does not ipso facto constitute offence of cheating for sustaining the charges. Existence of fraudulent or dishonest intention right at the beginning of the transaction with mens rea must be shown. The Opposite Party number two could have file the appropriate proceeding before the civil court for recovery of money against the company of the petitioner.

29. Therefore, in the light of above discussions no such ingredients can be found from the four corner of the petition of complaint to attract either Section 420 IPC against the petitioner and furthermore the company has not been arrayed as an accused despite putting allegations against the company and hence the criminal proceeding is liable to be quashed.

30. Thus the instant Criminal Revisional application being CRR No. 818 of 2015 is allowed. Connected applications if any are also disposed of. The entire proceeding being G.R Case No. 35 of 2012 arising out of Hare Street P.S Case No. 6 dated January 2, 2012 under section 420 IPC is hereby quashed .

31. Case Diary if any be returned to the Learned Advocate for the State .

32. Let a copy of this Judgement be sent to the Learned court of Chief Metropolitan Magistrate at Calcutta .

33. No order of costs.

- 34.** Urgent certified copy of the Judgement if applied for be given to the parties on priority basis.

(CHAITALI CHATTERJEE DAS, J.)

