

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1661 of 2022

Parag Majumdar

Vs.

The State of West Bengal & Anr.

For the Petitioner

:Mr. Manjit Singh, Sr. Adv.

Mr. Abhishek Sikdar Adv.

Mr. Biswajit Mal, Adv.

Ms. Sahili Dey, Adv.

Last Heard on

:04.08.2025

Judgment on

:21.08.2025

Bibhas Ranjan De, J.

1. A complaint was lodged under Section 200 of the Code of Criminal Procedure (hereinafter referred to as CrPC) before the Court of Additional Chief Judicial Magistrate, Barrackpore, wherein it was alleged, inter alia, that the accused petitioner had willfully defaulted in remitting the rightful professional fees due and owing to the complainant, who had diligently rendered legal services by instituting and prosecuting two Sessions cases before the Fast Track Court at Barrackpore. The Ld. Additional Chief Judicial Magistrate registered the same as C. case no. 640/ 2021 and took cognizance of offence under Section 420/406 of the Indian Penal Code (hereinafter referred to as IPC). The case was transferred to the Ld. Judicial Magistrate, 4th Court, Barackpore, who then examined the complainant on S.A. under Section 200 of CrPC and issued process.
2. The instant revision application has been filed with a prayer for quashing that proceeding pending in the Court of Ld. Judicial Magistrate, 4th Court, Barrackpore.

- 3.** Mr. Manjit Singh, Ld. Senior Counsel, appearing on behalf of the petitioner has submitted that any act of non-payment of fees claimed by Ld. Advocate does not attract any criminal offence. Mr. Singh has further submitted that in spite of repeated service of notice opposite party no. 2 did not appear before this Court. Mr. Singh has further contended that the Ld. Magistrate took cognizance of the alleged offence which was not substantiated by any cogent documents particularly the Vakalatnama by which complainant was authorized to represent the petitioner before any Court of law.

Analysis:-

- 4.** Before delving deep into the merit, it would be profitable to reproduce the ingredients of Section 420 of the IPC which deals with cheating and dishonestly inducing the delivery of property. For an offence under this Section to be established, several essential elements must be present:-
- a. Dishonest inducement
 - b. Fraudulent intent
 - c. Deception leading to delivery of property
- 5.** It is utterly beyond comprehension and entirely inexplicable how aforementioned Sessions Cases found its way to be

instituted directly before the Ld. Fast Track Court at Barrackpore. The direct filing of a Session Case before a Fast Track Court stands in stark contradiction to the established procedural framework prescribed within the Code of Criminal Procedure.

- 6.** Whilst maintaining my keen awareness of the thoroughly absurd subject matter that forms the very foundation of the agreement between the parties, let me now proceed to meticulous examination of the purported offences and their intricate relevance to the case at hand.
- 7.** The facts narrated in the complaint clearly discloses that the parties to the instant application entered into an agreement, while agreeing to pay a sum of Rs. 1,00,000/- for legal consultation payment and petitioner allegedly committed default in payment of the legal fees to his Ld. Advocate/opposite party no.2 herein.
- 8.** Turning to the allegations made against the petitioner, who is only a litigant, failed to comply his obligation in terms of agreement. Therefore, certainly it can give rise to a cause of action for filing a suit.

9. Section 406 IPC deals with punishment for criminal breach of trust. The ingredients in order to constitute a criminal breach of trust are:

- i. Entrusting a person with property or with any dominion over property;
- ii. That person so entrusted, dishonestly misappropriates or converts that property to his own use or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or willfully suffers any other person so to do.

10. But, here, the relationship between the parties is only in the capacity of 'client' and 'advocate'. Ld. Advocate was allowed to file two sessions cases and also for taking steps before the Ld. Fast Track Court at Barrackpore. It is not the case of the opposite party no. 2 that the petitioner committed any breach of trust. Mere failure to pay legal fees to the Ld. Advocate, in my humble opinion, does not constitute an offence punishable under Section 406 IPC, in view of ingredients of offence stated supra. Therefore, it is clear that

FIR did not disclose commission of an offence prima facie punishable under Section 406 IPC.

11. The other offence allegedly committed by the petitioner is punishable under Section 420 of IPC which deals with punishment for offence of 'cheating' defined in Section 415 of the IPC. To constitute an offence of 'cheating' it requires the presence of dishonest or fraudulent intention at the inception of the transaction. Merely defaulting on payment of breach of contractual obligation by clients does not, in itself, constitute cheating unless such dishonest intent is established from the outset. Therefore, in cases where clients default on legal consultation payments, criminal liability under Section 420 IPC is generally not applicable unless there is clear evidence of fraudulent inducement or dishonest intent at the time of entering into the agreement, which is *sine qua non* to proceed against the petitioner for the offence punishable under Section 420 of IPC.

12. On careful scrutiny of the complaint, I find that even if the allegations made in the complaint are accepted on its face value, it would only give rise to cause of action for filing civil suit, but no criminal offence is made out to proceed

against the petitioner. Therefore, I am of the humble opinion, that the Ld. Additional Chief Judicial Magistrate, Barrackpore, without applying his mind took cognizance of the offence in spite of admitted relationship between the parties as advocate and client.

- 13.** In the aforesaid view of the matter, the revision application being no. CRR 1661 of 2022 is hereby allowed.
- 14.** As a sequel, the proceeding in connection with C. case no. 640/ 2021 under Section 406/420 of IPC pending before the Ld. Judicial Magistrate, 4th Court, Barrackpore, Stands quashed.
- 15.** Connected applications, if any, stand disposed of accordingly.
- 16.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 17.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]