

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1906 of 2022

**RupaliSaha
Vs.
The State of West Bengal &Anr.**

For the Petitioner	:	Mr. Satadru Lahiri Mr. Rishav Singh Mr. Sagar Kumar Mishra Mr. Soumalya Dutta
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For the State	:	Mr. Rudradipta Nandy, Ld. APP Ms. Sonali Das
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For the Opposite party No.2	:	Mr. Soumya Nag Mr. Rajdutt Sengupta
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Heard on	:	08.04.2025
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Judgment on	:	22.04.2025
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Dr. Ajoy Kumar Mukherjee , J.:

1. The present application has been preferred seeking quashment of CGR 504 of 2021, currently pending before Judicial Magistrate, 5th Court, Alipore, arising out of New Alipore P.S. Case no. 56 of 2021 dated

12.02.2021. Petitioner contended that the opposite party no. 2 herein lodged a complaint with an allegation that petitioner herein/accused has defaulted in payment of rent of Rs. 9,10,000/- and for which the tenancy was terminated on 31.12.2020 and that the petitioner wrongfully restrained the complainant and man handled him, whenever he had tried to make his way for climbing 2nd and 3rd floor of the building.

2. Being aggrieved by the aforesaid impugned proceeding, Mr. Satadru Lahiri, learned Counsel appearing on behalf of the petitioner submits that the nature of dispute as revealed from FIR and also materials collected during investigation regarding withholding of the rent by tenant, cannot be termed as cheating or criminal breach of trust as defined in the Indian Penal Code (IPC) . He further contended that alleged part performance of contract cannot be the basis for initiating criminal prosecution for cheating or criminal breach of trust. Even if there is any allegation of withholding a portion of rent by the petitioner herein that at best can be termed as violation of tenancy agreement but cannot be said to be misuse or misappropriation of any property of complainant as entrusted by the petitioner. He further contended that it is settled law that prosecution cannot continue under section 420 and 406 of the Code simultaneously because there exist dichotomous nature of ingredients

3. Mr. Lahiri further argued that so far as allegation of wrongful restraint is concerned, it is a misnomer as the same is conspicuously missing in the notice given to the petitioner herein by the defacto complainant herein under section 106 of Transfer of Property Act and also could not be substantiated during investigation. The materials collected so

far does not demonstrate commission of any such offence and on the contrary the FIR and the materials collected during investigation exposes land-lord tenant dispute, pertaining to allegation regarding non-payment of a portion of rent by the tenant. The entire attempt was to give cloak of criminality to an absolute civil dispute.

4. In reply to the argument made on behalf of the opposite party Mr. Lahiri argued that alternative remedy of discharge does not negate scope of quashing because of difference of scope. The trial court cannot consider malice while determining prayer for discharge but the scope of High Court under section 482 is wider and as such contention of preferring quashment without having documents under section 207 of the Code is immaterial. Accordingly Mr. Lahiri argued that present proceeding has no legal basis and has been initiated only to harass the petitioner and accordingly he has prayed for quashing the said proceeding.

5. Mr. Nag learned Counsel appearing on behalf of the opposite party no.2 submits that the charge sheet has already been submitted but documents collected during investigation has not been supplied either to the petitioner or to the opposite party no.2 and as such it is not possible to ascertain whether all relevant materials have been collected or whether the statements recorded under section 161 of the Code reflects the true version of the events as narrated by the defacto complainant. He further contended that the High Court while exercising it's jurisdiction under section 482 of the Code, is required to consider only the allegations made in the FIR and if such allegations prima facie discloses the commission of cognizable offence, then the criminal proceeding ought not to be short-circuited by way of

quashing at this particular stage. In this context he further argued that the intention of the petitioner from the very inception of the transaction has been fraudulent, which is amply demonstrated from the Application filed by the petitioner. The petitioner has made inconsistent and misleading averments in the present Application and also suppressed material information which directly goes to the root of the dispute and underscores the necessity of a trial. The allegations levelled against the petitioner needs to be assessed in a full fledged trial and cannot be brushed aside or summarily quashed invoking jurisdiction under section 482 of the Code.

6. In reply to the petitioners argument that the present dispute is purely civil in nature, Mr. Nag argued that the facts on record unmistakably indicate that the petitioner under the guise of tenancy agreement entered the premises of the opposite party by making false and fraudulent representation. After gaining an access to a portion of property, the petitioner misused such possession for the purposes entirely outside the scope of the alleged tenancy and subsequently with the aid of other miscreants, the petitioner proceeded to deny the complainant/opposite party no.2's access to even those portion of the premises over which the petitioner had no legal or possessory right whatsoever. This pattern of conduct demonstrates a calculated design and dishonest intention on the part of the petitioner to usurp property under false pretends

7. He further contended that the arguments advance on behalf of the petitioner that the simultaneous invocation of section 420 and 406 of the IPC is legally impermissible, cannot be a valid ground for quashing the proceeding at this premature stage. In support of his contention that this is

not a fit case for quashing the proceeding, the petitioner relied upon following judgments:-

- (i) ***Trisuns Chemical Industry Vs Rajesh Agarwal and others*** reported in **(1999) 8 SCC 686,**
- (ii) ***Indian Oil Corporation Vs. NEPC India LTD and others.*** reported in **(2006) 6 SCC 736,**
- (iii) ***SW Palanitkar and other Vs. State of Bihar and another*** reported in **(2002) 1 SCC 241,**
- (iv) ***Medchl Chemicals and Pharma Pvt. Ltd. Vs. Biological .E. Ltd. and others.*** reported in **(2000) 3 SCC 269,**
- (v) ***Ravindra Kumar Madhanlal Goenka and another Vs. Rugmini Ram Raghav Spinners Pvt Ltd.*** reported in **(2009) 11 SCC 529.**

Decision

8. On perusal of the nature of the dispute as reveals from the FIR and also from the statements recorded during investigation, it appears that the entire matter relates to withholding of the rent by the tenant/company for a part of total tenancy period. There is no allegations of mis-representation regarding nature, purpose or object of tenancy. According to the submissions made by learned Counsel that the total tenancy period is of 28th Months from 01.09.2018 and there has been also security deposit of Rs. 2,10,000/- in custody of complainant/opposite party. The total amount payable was Rs. 19,60,000/-, out of which Rs. 10,50,000/- has been paid for 15 months and if Rs. 2,10,000/- which has been kept towards security deposit be adjusted, then Rs. 7,00,000/- is the alleged due amount, which

the complainant allegedly owes from the accused persons. Accordingly allegedly withholding of portion of rent for a tenancy period or part payment of rent at best can be violation of tenancy agreement but by any stretch of imagination, it cannot be said as misappropriation of any property of the complainant entrusted to the petitioner to attract section 406 of IPC. Since, the accused has already made part payment of the arrear amount of rent as stated above, it cannot also be said that there was any initial deception, on the part of the petitioner/accused person to attract section 420 of the IPC.

9. It is settled law that mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning i.e. when the tenancy agreement was entered into, cannot be presumed. Moreover, mere breach of tenancy agreement does not constitute offence of cheating and it depends upon the intention of the accused at the time of inducement. Even if there appears to be any subsequent suspicious conduct, that cannot be the sole test and mere breach of contract cannot give rise to criminal prosecution for cheating, unless fraudulent or dishonest intention is shown at the beginning of transaction. Further in both the aforesaid sections guilty mind i.e. *mens rea* to defraud must be present and in the case of cheating under section 420 it must be there from the very beginning or inception. Thus, every act of breach of trust may not result in a penal offence of criminal breach of trust, unless there is evidence of manipulating act of fraudulent misrepresentation.

10. Here, the complainant/opposite party no.2 might have his remedy for damages in civil courts but since there is no entrustment or breach of trust

with *malafide* or dishonest intention, it does not give rise to a criminal prosecution. There are also decision which held that same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously.

11. So far as the allegation of wrongful restraint as alleged in the complaint to attract section 341 of IPC is concerned it appears that the FIR maker in the penultimate paragraph of his complaint has only stated as follows:-

“It is pertinent to mention herein that whenever I am trying to make my way/enter in the second and third floor of the premises, the above noted persons are wrongfully restraining me and manhandling me.”

12. Mr. Lahiri, in this context strenuously argued that the FIR was lodged on 12th February, 2021 but long before that in the year 2020, the defacto complainant sent a notice of eviction under section 106 of the Transfer of Property Act on 06.07.2020. But nowhere in the said eviction notice the defacto complainant herein/land lord has alleged against the tenant /petitioner herein that the tenant restrained him from making his way in climbing the second or third floor of the premises.

13. It is clear from the materials collected during investigation that no details or particulars are given as to when and on which date the accused had manhandled complainant or threatened complainant or had restrained the complainant from climbing in the second or third floor of the tenanted building. Without the said details and particulars, it is apparent that this allegations have been made only with an intention to make the allegation grave.

14. Needless to say that in order to lodge a proper complaint, mere mentioning that “*whenever I tried to make my way.....*” is not be-all and end-all of the matter. What is required to be brought to the notice of the court is the particulars of the offence mentioning as far as possible date, time, place of alleged occurrence and the exact role played by the accused in committing the alleged offence. In the present complaint the allegation regarding wrongful restraint or manhandling by the petitioner or alleged threat are sadly vague. It does not show when and how such offence allegedly committed by accused and what is the role played by him in committing the offence.

15. Though the allegation in FIR is that whenever complainant attempted to climb second or third floor, the accused has allegedly committed the offence but surprisingly the opposite party/land lord had not lodged complain anywhere alleging such obstruction, prior to lodging this complaint and not even he has made any reference about such obstruction in his notice for eviction and as such I do not find any substance in the above mentioned allegation of wrongful restraint or allegation of manhandling of complainant by the petitioner.

16. From the aforesaid discussion I have no other option but to conclude that the continuance of the further proceeding before the court below will be a mere abuse of the process of the court.

17. CRR 1906 of 2022 thus stands allowed.

18. The impugned criminal proceeding being CGR Case no. 504 of 2021 currently pending before Id. Judicial Magistrate 5th Court Alipore arising

out of New Alipore P.S. Case no. 56 of 2021 dated 12.02.2021 stands quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)