

07.05.2025
SL No.56
Court No.22
S.Gayen

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

CRR 1816 of 2024

**T. R. Prabhulla Chandran alias T. P. Chandran
Versus
Nurfat Molla**

Mr. U. S. Menon
Mr. Abhirup Chakraborty

...for the Petitioner

1. From the affidavit of service already on record, it is found that the notice of the revisional application as well as the copy of the revisional application was served upon the opposite party who has not been represented in this revisional application.
2. Learned counsel appearing on behalf of the petitioner is present.
3. This revisional application has been filed with a prayer for quashing the proceeding in connection with Case No. CN-2828 of 2023 under Sections 406/420 of the Indian Penal Code, 1881.
4. The complaint case was initiated by the opposite party by filing an application under Section 200 of the Code of Criminal Procedure before the Court of learned Additional Metropolitan Magistrate, Calcutta alleging, *inter alia*, that there was a business transaction between the parties *qua* the supply of jute products. It was further alleged that the petitioner used to pay against the supply of jute but lastly a sum of Rs. 9,74,389/- was found due as outstanding, according to accounts maintained by the opposite party/complainant. The complainant/opposite party herein

demanded the dues but the petitioner refused to pay the outstanding amount.

5. As a sequel, the application under Section 200 of the Code of Criminal Procedure was filed and learned Additional Chief Metropolitan Magistrate, Calcutta took cognizance the offence and transfer the case to the Court of learned Metropolitan Magistrate, 19th Court for enquiry and disposal. The learned Metropolitan Magistrate, 19th Court made an enquiry under Section 202 of the Code of Criminal Procedure by examining the witnesses and process was issued for the offence punishable under Sections 406/420 of the Indian Penal Code.
6. Mr. U.S. Menon, learned counsel appearing on behalf of the petitioner has submitted that the allegation made in the complaint under Section 200 of the Code of Criminal Procedure discloses a civil dispute between the parties and it is further submitted that in fact, this complaint was lodged just to realize the dues from the petitioner.
7. In support of his contention, he referred to a notice dated 5th June, 2023 before lodging complaint under Section 200 of the Code of Criminal Procedure and submitted that this complaint was lodged for realization of the dues as it appears from the notice dated 5th June, 2023.
8. Mr. Menon, learned counsel for the petitioner relied on a case of ***Vinod Natesan vs. State of Kerala & Ors.*** reported in **(2019) 2 SCC 401**, wherein it was held that merely because the accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one

month's notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406/420 IPC as alleged.

9. Mr. Menon further relied on a case of **Anil Mahajan vs. Bhor Industries Ltd. & Anr.** reported in **(2005) 10 SCC 228**, wherein the Hon'ble Apex Court observed particularly in Paragraph 8, which runs as follows:-

"8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question."

10. In the case at hand, the tone and tenor of the written complaint clearly spells out an allegation of realization of balance amount. There was a commercial transaction between the parties and it is

also disclosed in the written complaint that the petitioner paid time to time against delivery of jute products but lastly a sum of Rs. 9,74,389/- was found due.

11. To attract the offence under Section 420 of the Indian Penal Code, initial deception is *sine qua non*. Here in this case, no such ingredient is found as there is clear admission of payment against supply of jutes by the petitioner time to time.
12. Therefore, the complaint involved in this revisional application did not disclose any offence under Section 420 of the Indian Penal Code. That apart, there is no allegation of entrustment and misappropriation of any property. From that point of view, the offence under Section 406 of the Indian Penal Code does not attract.
13. In the aforesaid view of the matter, the proceeding in connection with Case No. CN-2828 of 2023 under Sections 406/420 of the Indian Penal Code lying before the learned Metropolitan Magistrate, 19th Court, Calcutta is liable to be quashed.
14. As a sequel, the revisional application stands allowed.
15. The proceeding impugned in this revisional application also stands quashed.
16. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.
17. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)