IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1901 of 2011

Bajaj Allianz General Insurance Co. Ltd. & Ors.
-Vs-
The State of West Bengal and Anr.

For the Petitioners	: Mr. Debasish Ray Mr. Somopriya Chowdhury Mr. Aviroop Mitra
For the State (Amicus Curiae)	: Mr. Anand Keshari
Heard on	: 19.03.2024, 10.05.2024, 20.05.2024, 01.10.2024
Judgment on	: 07.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioners had filed the present revisional application seeking quashing of proceedings in C-4526/2009 (T.R. No. 311/2009) under Section 420 of the Indian Penal Code, which had been pending before the Learned 8th Judicial Magistrate, Alipore, South 24 Parganas. The process had been issued against the petitioners by order dated 21st April, 2011. Petitioner no.1 had been a corporate entity engaged in general insurance business, and petitioners nos. 2 to 5 had been officers of the said company posted at various locations across Delhi and Kolkata. The company's operations had

been governed by policies approved by the Insurance Regulatory and Development Authority (IRDA), and its activities had been closely monitored by the said statutory authority.

2. The opposite party no.2 had approached the said company seeking insurance coverage for plant and machinery at its Integrated Steel Plant in Jharkhand, following which the said company had issued an "Erection All Risk Policy" covering the equipment, including a 150-tonne EOT crane. The policy had contained a clause regarding “Period of Cover” whereby coverage for any machinery ceased after four weeks of successful testing and readiness for operation. According to a certificate dated 27th October, 2006 issued by the supplier, M/s. Bunty International, the crane had been fully erected and commissioned by 25th October, 2006, and had undergone successful trial runs.
3. On 6th April, 2007, the opposite party no.2 had informed the said company of damage to its plant due to a thunderstorm, allegedly including the said crane. The company had appointed an independent IRDA-accredited surveyor to assess the damage. The final claim of the opposite party no.2 had been revised to Rs.38,03,860/- and submitted in October 2007. However, the surveyor's report, the supplier’s certificate, and subsequent site inspection had revealed that the crane had been commissioned and put into use long before the alleged date of loss, thereby falling outside the purview of coverage under the policy.
4. After analyzing the documents and the surveyor’s report, the company had, on 11th March, 2008, offered to settle the claim to the extent of Rs.25,360/-

in respect of the PVC tank only, and had repudiated liability for the crane. As the opposite party no.2 had failed to submit the requisite voucher, the company had construed the claim as abandoned and had accordingly closed the same as a "No Claim" on 21st July, 2008. In the first quarter of 2009, the opposite party no.2 had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before this Hon'ble Court, which had been rejected by a coordinate Bench by order dated 4th May, 2009 on the ground that no prima facie case had been established.

5. Thereafter, on 15th July, 2009, the opposite party no.2 had filed a complaint before the Learned Chief Judicial Magistrate, Alipore, alleging commission of offences under Section 420 of the IPC, which had resulted in cognizance being taken and issuance of process. Subsequently, the opposite party no.2 had also filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 before this Hon'ble Court, seeking appointment of an arbitrator, which had remained pending.

6. The petitioners had contended that they had been innocent and had no connection with the alleged offence. The allegations levelled had been false, and the institution of criminal proceedings had been a retaliatory measure adopted by the opposite party no.2 to coerce the company into settling a claim that had not been covered under the contract of insurance. The opposite party no.2 had at no point disputed the terms and conditions of the policy and had full knowledge thereof, including the clause regarding cessation of coverage upon the machinery's commissioning and operation. This had also been evident from communications including an email dated

14th March, 2008. The allegations of cheating had never been raised during the repudiation of claim or during earlier proceedings before this Hon'ble Court. It had only been after the rejection of interim reliefs that such criminal allegations had been levelled. The criminal complaint had thus been a mere attempt to misuse the process of law and pressurize the petitioners and the company into accommodating an untenable and contractually excluded insurance claim.

7. The Learned Advocate appearing on behalf of the petitioners submitted that the entire proceeding initiated by the opposite party no.2 amounted to a gross abuse of the process of law, and had been filed with mala fide intention merely to exert pressure and coerce the petitioners into settling a disputed civil claim. It was contended that the opposite party no.2 indulged in forum shopping and concealed from the Learned Magistrate the fact that this Hon'ble Court had previously rejected his application for interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. Even assuming the allegations made in the petition of complaint to be true, they failed to make out a prima facie case of cheating under Section 420 IPC, as the same arose purely out of a civil dispute pertaining to repudiation of an insurance claim, which was governed entirely by the terms and conditions of the relevant policy. The complaint nowhere alleged any fraudulent or false misrepresentation made by the petitioners at the inception of the transaction, nor did it show any dishonest intention on part of the petitioners to cause wrongful loss to the opposite party no.2, which is a necessary ingredient of the offence under Section 420 Indian Penal Code. No

delivery of property induced by deception was alleged, nor was any misappropriation of property shown. The petition of complaint lacked any specific role ascribed to the petitioners and was replete with bald, omnibus allegations intended only to initiate vexatious criminal proceedings. Moreover, the petitioners were residents outside the jurisdiction of the Learned Chief Judicial Magistrate, Alipore, and yet the mandatory requirement under Section 202 Cr.P.C., post its amendment in 2006, for preliminary inquiry or investigation before issuance of process was not complied with. The Learned Magistrate issued process in a mechanical manner, without applying judicial mind either to the complaint or the documents relied upon, which were all unimpeachable and clearly negated the allegations. It was well settled that criminal proceedings are not to be used as a shortcut to civil remedies, and that vicarious liability is not to be presumed in absence of specific statutory provision, which is wholly lacking in the present case. The complaint failed to disclose how the petitioners could be personally held liable, nor did it invoke any statutory basis to impute vicarious liability to officers of a juristic entity. The actions of the petitioners were within the scope of their official duties and in accordance with the terms of the insurance policy. Furthermore, the complaint was manifestly intended to overawe and terrorize the petitioners into conceding to an untenable claim, and thus, the continuation of the impugned proceeding would result in irreparable prejudice to the petitioners' liberty and reputation. In view of the above, it was prayed that the order taking cognizance and issuing process be quashed, as the complaint disclosed no offence under Section 420 IPC or any other penal provision and was clearly not maintainable in law.

8. The Learned Advocate representing the petitioners had submitted that the impugned proceeding had been a gross abuse of the process of the Criminal Court, as no offence under Section 420 of the Indian Penal Code had been made out. It had been argued that the dispute stemmed from a purely contractual disagreement relating to an insurance claim, governed by an arbitration clause, which had in fact been duly invoked. Simultaneously, the jurisdiction of the Learned Consumer Redressal Forum had also been resorted to. Despite the availability and invocation of such civil remedies, the opposite party no.2 had chosen to institute a criminal complaint by suppressing material facts, thereby misusing the criminal process. It had been emphasized that mere allegations of breach of contract could not amount to cheating, and no dishonest intention at the inception of the transaction had been alleged or established. In support of this proposition, reliance had been placed on *Uma Shankar Gopalika vs. State of Bihar and Anr.*, (2005) 10 SCC 336, para 6; *Anil Mahajan vs. Bhor Industries Limited and Anr.*, (2005) 10 SCC 228, paras 8 to 11; *Hridaya Ranjan Prasad Verma vs. State of Bihar*, (2000) 4 SCC 168, paras 14 and 15; *Dalip Kaur & Ors. vs. Jagnar Singh & Anr.*, (2009) 14 SCC 696, paras 9 and 10; and *Vidur Kapur vs. State of West Bengal*, 2023 SCC OnLine Cal 2886, paras 30, 31 and 37. It had also been submitted that petitioner nos.2 to 5 could not be held vicariously liable, as Section 420 IPC did not envisage any such liability unless specifically provided for by statute. The complaint did not disclose

any overt act or specific role on the part of the said petitioners, and the allegations were directed only against petitioner no.1 company. In support of this argument, the petitioners had relied upon *S.K. Alagh vs. State of Uttar Pradesh*, (2008) 5 SCC 662, paras 16, 18 to 20; *Shiv Kumar Jatia vs. State of NCT of Delhi*, (2019) 17 SCC 193, paras 19–22; and *Maksud Saiyed vs. State of Gujarat & Ors.*, (2008) 5 SCC 668, para 13. It had further been urged that the order issuing process dated 21st April 2011 had been passed in gross violation of Sections 202 and 204 of the Code of Criminal Procedure, 1973, since the Learned Magistrate had not conducted any mandatory enquiry under Section 202 CrPC despite the petitioners being residents outside the Court's territorial jurisdiction. The order-sheet had not reflected any compliance with the said provision, and the statements recorded under Section 200 CrPC could not substitute such enquiry. In this regard, reliance had been placed upon *Birla Corporation Limited vs. Adventz Investments and Holdings Limited*, (2019) 16 SCC 610, paras 30 and 33; *Mehmood Ul Rahaman vs. Khajir Md. Kundra*, (2015) 12 SCC 420; and *Aroon Poori vs. Jayakumar Hiremath*, (2017) 7 SCC 767, paras 2 to 4. Lastly, it had been submitted that the impugned order issuing process had failed to disclose any reasons, in contravention of the ratio laid down in *Sunil Bharti Mittal vs. CBI*, (2015) 4 SCC 609, para 53. In the light of these submissions, it had been contended that the proceedings had been tainted with mala fides and amounted to a manifest abuse of the process of Court, and were thus liable to be quashed.

9. The Learned Advocate representing the State as Amicus Curiae submitted at this nascent stage the proceedings should not be dismissed.

10. The petitioners approached this Court seeking quashing of the criminal proceeding in C-4526/2009 (T.R. No. 311/2009) under Section 420 of the Indian Penal Code, pending before the Learned 8th Judicial Magistrate, Alipore, South 24 Parganas, on the ground that the complaint arose purely from a civil and contractual dispute pertaining to repudiation of an insurance claim. The petitioners contended that the criminal proceeding had been maliciously initiated by the opposite party no.2, in retaliation to the rejection of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, and had been a gross abuse of the process of Court. Petitioner no.1 had been a company regulated by the IRDA and petitioner nos.2 to 5 were its officers, who had merely acted in discharge of their official functions. The "Erection All Risk Policy" issued by the petitioner-company explicitly excluded coverage after the machinery's commissioning and all materials, including the surveyor's report and supplier's certificate, substantiated the company's repudiation of the claim.

11. The complaint failed to disclose any dishonest or fraudulent intention at the inception of the transaction, which indubitably had been a *sine qua non* for the offence under Section 420 Indian Penal Code. It did not attribute any specific role or act to the petitioners individually and in order to fasten vicarious liability without statutory semblance. Reliance was placed on *Uma Shankar Gopalika vs. State of Bihar (supra)*, *Anil Mahajan vs. Bhor Industries Ltd. (supra)*, *Hridaya Ranjan Prasad Verma vs. State of Bihar (supra)*, *Dalip*

Kaur vs. Jagnar Singh (supra), and *Vidur Kapur vs. State of West Bengal (supra)* to urge that mere breach of contract does not constitute cheating unless there was fraudulent intention from the outset and rightly accepted. The process had been issued in contravention of the mandate of Section 202 Cr.P.C., as the petitioners were residents outside the jurisdiction and yet no enquiry was conducted prior to issuance of process. The Magistrate's order was mechanically passed, bereft of reasons, and in violation of the settled principles laid down in *Birla Corporation Ltd. vs. Adventz Holdings (supra)*, *Mehmood Ul Rahaman vs. Khajir Md. Kundra (supra)*, *Aroon Poori vs. Jayakumar Hiremath (supra)*, and *Sunil Bharti Mittal vs. CBI (supra)*.

12. The dispute between the parties predominate a civil dispute which indicated resolution of the same recoursing to Arbitration proceedings. The criminal case to proceed will generate a burden on the Trial Court, Accordingly, it is observed that continuation of the criminal proceeding will cause grave prejudice to the petitioners and is liable to be quashed to prevent miscarriage of justice.

13. In view of the above discussions, the instant criminal revisional application being CRR 1901 of 2011 is allowed.

14. Under such facts and circumstances, the proceedings being C-4526/2009 (T.R. No.311/2009) under Section 420 of the Indian Penal Code pending before the Learned 8th Judicial Magistrate, Alipore, South-24 Parganas and all orders passed therein including order dated 21st April, 2011 are quashed.

15. Accordingly, the criminal revisional application being no. CRR 1901 of 2011 is disposed of. Connected application, if any, also stands disposed of.

16. Case diary, if any, be returned forthwith.
17. There is no order as to costs.
18. I record my appreciation for the able assistance of the Learned Advocate Mr. Anand Keshari as Amicus Curiae in disposing of this criminal revisional application.
19. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
20. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)