

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1634 of 2015

Ram Niwas Giri & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners	:	Mr. D. Bhattacharya Mr. Subhasis Chakraborty Mr. Amit Chowdhury Ms. Sushmita Kumari Singh
---------------------	---	--

For the State	:	Ms. Debasish Roy Mr. Rudradipta Nandy Mr. Anand Keshari
---------------	---	---

Heard on	:	27.01.2025
----------	---	------------

Judgment on	:	11.02.2025
-------------	---	------------

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner herein has taken exception against impugned proceeding arising out of Chanditala P.S. Case no. 136/15 dated 23.04.2015 for alleged commission of offence punishable under sections 420/120B/406/504/506 of the IPC. The gist of FIR lodged by opposite

party no.2 herein is that the opposite party no.2/FIR maker is the director of three companies namely Lovely Trade Company, Pvt. Ltd. , Radharani Merchants Pvt. Ltd., Star Mark Dealers Pvt. Ltd. and he is holding 50% share of the above three companies. He had invested huge fund in the said companies since the very inception of the said companies. It purchased several plots of land in and around the Jay Krishan Pur Mouza under Chanditala P.S., Hooghly. The petitioners herein started selling the landed property of the said company to some third party without consent of the complainant. Complainant went to the office of said companies on 3rd April, 2015, when the accused persons/petitioners herein restrained the entry of the complainant with force and they have also threatened the complainant with dire consequences.

2. On the basis of said written complaint, investigation in the abovementioned Chanditala P.S. case no. 136 of 2016 was started. After completion of investigation, police submitted charge sheet against all the three accused persons/petitioners herein under section 420/120B/406/504/506 IPC.

3. Being aggrieved by the impugned proceeding, Mr. Bhattacharya learned Counsel appearing on behalf of the petitioner argued that nothing in the complaint goes to show that an offence under sections 420/120B/406/504/506 of the IPC has been made out. He further submitted that addition of section 506 of the IPC has been forcibly brought in to make out a case and as such the same bereft of any ingredient of the offence. He further submitted that the present complaint filed under section 156(3) of Cr.P.C., is a replica of the former complaint lodged by the

same complainant and it has been lodged in order to harass and to create an additional pressure to withdraw the criminal case filed against him on 08.07.2014 by the petitioner no.2 herein on behalf of the companies. Infact the allegations levelled in the complaint clearly demonstrates civil dispute at its optimal and the allegations even if taken at its entirety does not constitute the ingredients of any criminal offence, far from the offences alleged in the FIR. Accordingly petitioner has prayed for quashing the said proceeding.

4. Opposite party no.2/complainant is not represented.

5. Mr. Nandy learned Counsel on behalf of the State placed the case diary and leaves the matter to the discretion of the court.

6. On bare perusal of the contents made in the application under section 156(3) of Cr.P.C., which was subsequently treated as FIR demonstrates that the allegations levelled against the petitioner in para 6 is that presently the petitioners/accused persons have been started selling the landed property to some third party without the consent of the FIR maker and in para 7 he alleged that on 03.04.2015 he went to the office of the said company but the petitioners and their men and agent have restrained petitioner's entry in the office of the company with force and presently the petitioners are threatening the FIR maker with consequences. There is no other allegation levelled in the written complaint.

7. It further appears on perusal of the case diary that during investigation police recorded statement of four witnesses and all of them has stated that the accused persons have sold the company's property to outsiders without intimating the complainant and after getting such

information when the complainant went to the office of the company on 03.04.2015, hot altercation took place and he was threatened by the accused persons and all these were done by the accused persons in collusion with each other in order to deprive complainant from his share and that they had sold the company's property illegally, where FIR maker has lion's share and thereby they have misappropriated huge sum of money.

8. The offence under section 504 and 506 are non-cognizable. The contents of allegation in the present case including the written complaint clearly shows that the cause of action of the dispute among the parties cropped up on 03.04.2015, when the complainant got the information of alleged misdeeds and went to the office of the company. The materials in the case diary does not disclose any case of unlawful restraint. The ingredients of entrustment or dishonest intention leading to delivery of property or cheating with knowledge to cause wrongful loss are also not on record. The dispute that has been referred herein is that the accused persons had sold some of the properties of the company to the outsiders without giving intimation to the FIR maker, who has good amount of share in the company. Accordingly the dispute is civil in nature and may be a commercial dispute over company affairs but the ingredients required to constitute the criminal offence either under section 420 or under 406 of IPC are absent. I am not unmindful to the fact that a complaint disclosing civil transaction may also have a criminal texture but in a situation like this, where civil remedy was available to the FIR maker and when the

dispute is essentially of a civil nature, the court must not allow to give a cloak of criminal offence over a civil dispute.

9. It also appear that the present dispute between the parties as canvassed may have arisen over a breach of contract but a mere breach of contract by one of the parties would not attract prosecution for criminal offence in every case as there is distinction between the offence of cheating and the mere breach of contractual obligation.

10. In ***Vesa Holdings (p) Ltd. Vs. State of Kerala*** reported in **(2015) 8 SCC 293** it has been held that every breach of contract would not give rise to the offence of cheating and it is required to be shown that the accused had fraudulent or dishonest intention. In this case there is no allegation of initial deception by the present petitioners by making any false or misleading representation. Even if I accept that the assertions made in the complaint are correct, even then a criminal offence under section 420 read with section 415 of the IPC has not been made out prima facie in the absence of deception by making false or misleading representation or inducement of the complainant to deliver any property at the time when the company was formed. The ingredients to allege the offence are neither stated in the complaint nor the materials collected during investigation suggests like that. In ***Vesa holding (p) Ltd. (supra)*** the supreme Court also held that if any intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting of an offence of cheating, the complainant is required to show that the accused/petitioners had fraudulent or dishonest intention at the time of formation of the companies.

11. Similarly, law clearly recognizes a difference between simple investment of money to the company and entrustment of money or property to the company. A mere breach of a promise, agreement or contract does not ipso fact constitute the offence of the criminal breach of trust contained in section 405 IPC, without there being a clear case of entrustment.

12. The police has submitted charge sheet under section 406 and 420 of IPC without pointing out how the ingredients of said sections are satisfied. No details or particular are mentioned in the charge sheet. There are decisions which also hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. The dispute herein is essentially about the affairs of the company and the sharing of profit and loss and/or its directorship, which does not constitute any offence far from cognizable criminal offence. The charge sheet also discloses contractual obligation and breach thereof for which the remedy is available in civil court. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceeding against the petitioner and the entire idea seems to be to convert a civil dispute into criminal and the criminal courts are not meant to be used for settling scores or pressurize parties to settle civil disputes.

13. In ***State of Haryana Vs. Bhajanlal*** reported in **1992 supp 1 SCC 335** Supreme Court has set out some category of cases in which the inherent power under section 482 Cr.P.C. can be exercised. Para 102 of judgment reads as follows:-

102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary*

power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. Having considered over all aspects of the instant proceeding, I am of the view that the present case falls under the first, third and seventh category set out in para 102 of the judgment in ***Bhajanlal's Case (supra)*** and as such the impugned proceeding is liable to be quashed.

15. In view of above **CRR 1634 of 2015** is allowed. The impugned proceeding being Chanditala P.S. Case no. 136/15 dated 23.04.2015 is hereby quashed.

16. 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.)