IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2378 of 2022
With
CRAN 1/2022

Shib Shankar Saha & Another
Versus
The State of West Bengal & Another

For the Petitioners	:	Mr. Sanjay Banerjee, Adv. Mr. Joydeep Bhattacharjee, Adv.
For the State	:	Mr. Avishek Sinha, Adv.
Heard on	:	08.01.2025
Judgment on	:	07.03.2025

Ajay Kumar Gupta, J:

1. Petitioners being the accused persons have filed this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 seeking for quashing of the proceeding being G.R. Case No. 49 of 2013 arising out of Shakespeare Sarani Police Station Case No. 7 of 2013 dated 02.01.2013 in which Charge Sheet No. 125/14 dated 24.09.2014 has been submitted under Sections 420/120B of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 4th Court at Calcutta.

2. The essential facts are relevant for the disposal of the present application as under: -

2a. Petitioner no. 1 was engaged in the business of selling computers with his place of business situated at 1/1A, Biplobi Anukul Chandra Street, Kolkata – 700 072. Petitioner no. 2 is his wife.

2b. The petitioner no. 1 availed of a Cash Credit/Overdraft facility from Allahabad Bank, Chowringhee Branch amounting to Rs. 35 Lakhs. However, he became indebted and was unable to liquidate the cash credit. Consequently, around 2013, he was compelled to close the business.

2c. On 09.10.2012, the Chief Manager of Allahabad Bank, Chowringhee Branch lodged a written complaint before the Officer-in-Charge, Shakespeare Sarani Police Station alleging, *inter alia*, that the petitioner no. 1, being the proprietor of Sankalp Infosys along with the petitioner no. 2, namely, Papiya Saha (wife of the petitioner no. 1) having its registered office at 1/1A, Biplobi Anukul Chandra Street, Kolkata – 700 072 had obtained Cash Credit/Overdraft facility of Rs. 35 Lakhs on 06.06.2009 using fraudulent means.

2d. The petitioner no. 1 along with his wife both assured that they will pay the outstanding balance of Rs. 32,76,453/- as on 30.09.2012. Due to unreasonable suspicion, the Bank verified the documents submitted by the petitioners and found prima facie reasons to doubt their authenticity.

2e. It was further alleged that the petitioners misrepresented themselves as reputed businessmen and using fabricated, false and forged documents, defrauded the bank and conspired to cheat the bank and misappropriated public money.

2f. Based on the written complaint, Shakespeare Sarani Police Station Case No. 7 of 2013 dated 02.01.2013 under Sections 420/120B of the Indian Penal Code, 1860 was registered against the petitioners and initiated investigation.

2g. Upon completion of investigation, the Investigating Officer has submitted a Charge Sheet being No. 125/14 dated 24.09.2014 under Sections 420/120B of the Indian Penal Code, 1860 against the petitioners. On 27.11.2014, the Learned Metropolitan Magistrate, 4th Court, Calcutta took cognizance of the offence and issued summons upon the petitioners.

2h. Subsequently, on 10.02.2021, the Learned Trial Court framed charges under Sections 420/120B of the IPC against both the petitioners, who pleaded not guilty and claimed to be tried.

2i. However, the petitioners contended that there is no iota of ingredients of criminal offences far less any offences punishable under Sections 420/120B of the IPC. They contended that non-payment or outstanding dues of a cash credit constitute a purely nature of civil disputes. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Learned counsel appearing on behalf of the petitioners strenuously argued that the petitioner no. 1, in the ordinary course of business, applied for and availed Cash Credit from the said bank. The said cash credit/loan was secured against a fixed deposit by the petitioners.

4. It was further submitted that after about 3 years of expiry of the said cash credit/loan, the petitioner no. 1 admittedly failed to repay the outstanding amount for which the concerned bank has taken steps before the Learned Debts Recovery Tribunal, Bench – I, Calcutta. In the said proceeding, not a single allegation found against the petitioners with regard to any dishonest representation or inducement to avail the said cash credit/loan. Whatever allegations levelled against the petitioners with regard to avail the Cash Credit/Loan are false and fabricated. Even during investigation, no such facts reveal with regard to dishonest representation or inducement to avail the said cash credit/loan.

5. Actually, the dispute is regarding non-payment of dues of loan, which is purely come within the purview of dispute in the nature of civil case and for that, the Bank has already filed recovery proceeding before the Learned Debts Recovery Tribunal. The Petitioners are contesting the claim. Despite, the opposite party no. 2 has tried to give a colour of criminal acts only by narrating that the petitioners had made false representation and dishonestly and fraudulently made a bank to allow the cash credit/loan to the petitioners. Therefore, this proceeding is a sheer abuse of process of law, which needs to be nipped in the bud by quashing under Section 482 of the CrPC for the securing ends of justice.

6. Learned counsel appearing on behalf of the petitioners has placed reliance of a judgment passed in the case of ***A.M. Mohan Vs. State Represented by SHO and Another***[1] in support of his contention that no ingredients fulfil or prima facie case has been made out in the complaint/FIR, Charge Sheet, Documents etc. The Hon'ble Supreme Court deprecated and discouraged time and again the filing of a criminal case to settle the civil disputes and claims, which do not involve any criminal offence.

SUBMISSION ON BEHALF OF THE STATE:

7. Per contra, learned counsel appearing on behalf of the State submitted that the written complaint clearly discloses the ingredients of Sections 420/120B of the IPC. Apart from the written complaint, during investigation, sufficient materials were collected like seizure list and recorded statements of witnesses under Section 161 of CrPC and found sufficient materials against both the accused persons. Therefore, they are liable for offence punishable under Sections 420/120B of the IPC upon submission of a charge sheet. Accordingly, the instant application lacks merit and is liable to be dismissed, as

[1] 2024 SCC OnLine SC 339

the petitioners have defrauded the bank and misappropriated public money.

DISCUSSIONS AND FINDINGS BY THIS COURT:

8. Heard the arguments and submissions made by the parties and on perusal of the case diary, this Court finds the petitioners had admittedly availed Cash Credit/Loan to the tune of Rs. 35 Lakhs on 06.06.2009. As per the allegation of the bank, there are dues of Rs. 32,76,453/-.

9. From the aforesaid allegations, it is evident that the petitioners had re-paid a portion of the amount to the bank out of the said Cash Credit/Loan. However, subsequently, they failed to repay the outstanding dues of Rs. 32,76,453/- and, for that, the opposite party no. 2 has already initiated a recovery proceeding before the Debts Recovery Tribunal, Bench – I, Calcutta. The said fact has not been disputed by the State.

10. It also reveals from the case diary that the allegations levelled by the bank against the petitioners with regard to fraud, forgery and cheating the bank with criminal intention to defraud the bank and thus misappropriated public money appears vague and unsubstantiated.

11. It is unacceptable to believe with regard to allegations made against the petitioners for cheating, forgery, misrepresentation, furnishing of false and fabricated information, papers, documents, criminal breach of trust and others without supporting any documents. Even, at the time of granting sanction of Cash Credit, Bank Officials would have definitely checked and verified the documents supplied by the petitioners.

12. Even for the sake of argument, Petitioners have furnished false and fabricated information, papers and documents, but, no iota of evidence was collected by the Investigating Officer during investigation against the present petitioners to satisfy at least prima facie case for commission of offence punishable under Sections 420/120B of the IPC. Mere bald and vague allegations, made in complaint, do not suffice to allow to continue the proceedings against the present petitioners. In addition, the recovery proceeding has already been initiated by the bank for recovery of such outstanding amount of Cash Credit. For better understanding, Cash Credit is a type of loan that helps businessmen to meet their working capital needs. It is a kind of loan that banks offer to business companies and financial institutions. Before approving the said cash credit/loan, the concerned banks always verify their status, goodwill and performances and all the relevant documents before sanctioning such facilities.

13. The judgment relied by the petitioners in the case of ***A.M. Mohan Vs. State Represented by SHO and Another*** is squarely applicable in the facts and circumstances of this case. In the said judgment, the Hon'ble Supreme Court held in Paragraphs 11, 12, 13, 20 and 21 as under: -

> *"**11.** This Court, in the case of **Prof. R.K. Vijayasarathy v. Sudha Seetharam**[2] has culled out the ingredients to constitute the offence under Sections 415 and 420 of IPC, as under:*
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> > *"**15.** Section 415 of the Penal Code reads thus:*
> >
> > > *"**415. Cheating**.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."*

[2] (2019) 16 SCC 739 : 2019 INSC 216

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

***16.1.1.** The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*
***16.1.2.** The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and*
16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

*"**420. Cheating and dishonestly inducing delivery of property**. — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term*

which may extend to seven years, and shall also be liable to fine."

19. The ingredients to constitute an offence under Section 420 are as follows:

***19.1.** A person must commit the offence of cheating under Section 415; and*
***19.2.** The person cheated must be dishonestly induced to*
(a) deliver property to any person; or
(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."

***12.** A similar view has been taken by this Court in the cases of **Archana Rana v. State of Uttar Pradesh**[3] , **Deepak Gaba v. State of Uttar Pradesh**[4] and **Mariam Fasihuddin v. State by Adugodi Police Station**[5].*

***13.** It could thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any*

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[3] (2021) 3 SCC 751 : 2021 INSC 135
[4] (2023) 3 SCC 423 : 2023 INSC 1
[5] 2024 SCC OnLine SC 58 : 2024 INSC 49

person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:
(i) the deception of any person;
(ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and
(iii) dishonest intention of the accused at the time of making the inducement.

20. *The dishonest inducement is the sine qua non to attract the provisions of Sections 415 and 420 of IPC. In our considered view, the same is totally lacking qua the present appellant. In that view of the matter, we find that continuation of the criminal proceedings against the present appellant would be nothing else but amount to abuse of process of law resulting in miscarriage of justice.*

21. *Insofar as the contention of the respondents that since the charge-sheet has been filed, the present appeal is liable to be dismissed, is concerned, it will be relevant to refer to the following observations of this Court, in the case of* ***Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home***[6]*:*

[6] (2019) 11 SCC 706 : 2018 INSC 1060

*"**14.** First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge-sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in **Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23]**. In **Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23]**, this Court while deciding the question whether the High Court could entertain the Section 482 petition for quashing of FIR, when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed : (SCC p. 63, para 16)*

> *"16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge **[Joesph Saivaraj A. v. State of Gujarat, 2007 SCC OnLine Guj 365]** could have still examined whether the offences alleged to have been committed by the appellant were prima*

> *facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.”*

15. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 CrPC and that this Court is hearing an appeal from an order under Section 482 CrPC. Section 482 CrPC reads as follows:

> *“**482.** Saving of inherent powers of the High Court. —Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.”*

16.** There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court **[G. Sagar Suri v. State of U.P., (2000) 2 SCC 636, para 7: 2000 SCC (Cri) 513. Umesh Kumar v. State of A.P., (2013) 10 SCC 591, para

> ***20: (2014) 1 SCC (Cri) 338: (2014) 2 SCC (L&S) 237].*** *Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialized into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."*
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> *[emphasis supplied]"*

14. This Court, however, also relied a judgment of the Hon'ble Supreme Court in the case of ***The State of Kerala v. A. Pareed Pillai and Anr.***[7], where it was held as follows: -

> *"To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise."*

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[7] **1972 Cri.L.J.1243**

15. Similarly, in the case in hand, there is nothing to show that the petitioners had dishonest or fraudulent intention at the time of obtaining the loan/cash credit from the Bank. It is not disputed by the complainant that the petitioners had not paid any amount. However, complainant raised question about the outstanding loan/cash credit amount. Non-payment of outstanding loan/cash credit amount, by no stretch of imagination, can be called dishonest inducements. It was/is purely a non-fulfilment of contract, which definitely comes under civil dispute. Simply because of the loan/cash credit has not been re-paid or there are outstanding will not make it a case of willful or dishonest inducement or deception.

16. In the case of ***Paramjeet Batra v. State of Uttarakhand***[8], the Hon'ble Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

> *"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any*

[8] ***(2013) 11 SCC 673***

> *court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."*
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> *(Emphasis supplied)*

17. In the light of the above discussions and observations made by the Hon'ble Supreme Court in the aforesaid judgments, this Court is of the view that the proceeding should not be allowed to be continued against the present petitioners for securing ends of justice and to prevent an abuse of process of law.

18. Accordingly, **CRR No. 2378 of 2022** is **allowed**. **CRAN 1 of 2022** is also disposed of.

19. Consequently, the proceeding being G.R. Case No. 49 of 2013 arising out of Shakespeare Sarani Police Station Case No. 7 of

2013 dated 02.01.2013 in which Charge Sheet No. 125/14 dated 24.09.2014 has been submitted under Sections 420/120B of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 4th Court at Calcutta is hereby quashed insofar as the petitioners are concerned.

20. Let a copy of this Judgment be sent to the Learned Trial Court for information.

21. Case Diary, if any, is to be returned to the learned counsel for the State.

22. Interim order, if any, stands vacated.

23. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

24. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

(P.A.)/Shreen