

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

Present:

The Hon'ble Justice Jay Sengupta

CRR 2156 of 2015

Ramesh Kumar Agarwal & Anr.

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Phiroze Edulji
Mr. Koushik Kundu
.....Advocates

For the Opposition Party : Mr. Pradeep Kumar
.....Advocate

Heard lastly on : 30.01.2025

Judgment on : 07.05.2025

Jay Sengupta, J:

1. This is an application praying for quashing of proceedings in connection with Complaint Case No. CS-0398334/2014 under Sections 406/420/504/506 of the Indian Penal Code, 1860.

2. Learned senior counsel representing the petitioners submitted as follows. M/s. Kapil Pulses Pvt. Ltd. (complainant/opposite party) filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 (being Complaint Case No. CS-0398334/14) before the learned Chief Metropolitan Magistrate, Calcutta alleging commission of offences punishable under sections 406/420/504/506 of the Indian Penal Code, 1860 by the petitioners (Ramesh Kumar Agarwal and Siddhartha Agarwal @ Siddharth Agarwal). The allegations were to the extent that in 2011, the petitioners induced the complainant/opposite party to make advance payment of Rs. 13,97,569/- for supplying 30 M. Tons and 50 M. Tons of yellow peas vide two delivery order No. 06624 dated 10.01.2011 and No. 07002 dated 25.01.2011; however, the petitioners supplied only 110 bags of yellow peas weighing about 50 kg. each and 470 bags of yellow peas weighing about 50 kg. each out of the total 80 M. Tons in the first week of March, 2014; the petitioners refused to supply the remaining goods. Hence, the complainant/opposite party sent a demand notice dated 10.03.2014, to which the petitioners responded. The complainant/opposite party also replied thereto. First, there was a total non-compliance of Section 202 of the Code of Criminal Procedure, 1973. The petitioners had their place of business at 12, Government Place (East), Kolkata – 700067, but they resided at 5, Gokhale Road, Kolkata – 700020. The learned Magistrate ought to have considered that the petitioners reside beyond the jurisdiction of the Court and, hence, ought to have conducted an enquiry under Section 202 of the Code of Criminal Procedure, 1973 prior to issuing the process against them. Reliance was placed on *Shiv Jatia v. Gian*

Chand Malick and Ors., reported at 2024 (2) Supreme 592. The instant criminal case was a counterblast to the money suit filed by the petitioners. In December, 2010, the complainant/opposite party approached the petitioners for purchasing 100 M. Tons of yellow peas for Rs. 17,000/- per M. Ton and 100 M. Ton of yellow peas for Rs. 18,000/- per M. Ton. It was also agreed that yellow peas would be supplied upon making full payment. Pursuant to the earlier contract, the complainant/opposite party failed to pay additional charges for its default in lifting 37.510 M. Tons of yellow peas. Initially, it was agreed that the complainant/opposite party would bear the additional charges in case of default in lifting the agreed quantity of yellow peas within the stipulated period. The time limit for making the payment was extended and after the delivery of goods was effected by the petitioners, the time limit for lifting the ordered quantity of yellow peas was extended on condition to pay the storage and fumigation charges. However, the complainant/opposite party refused to lift the remaining portion of the yellow peas due to sharp fall of price of yellow peas in the market. Hence, the petitioners issued a notice dated 08.03.2014 to the complainant/opposite party calling upon them to clear the dues of Rs. 6,91,844/- towards the storage and fumigation charges and also to lift the remaining portion of the yellow peas. As the complainant/opposite party failed to do so, the petitioners filed a money suit (being Money Suit No. 430 of 2014) before the Learned Judge, 7th Bench, City Civil Court, Calcutta for recovery of money. The money suit was pending final adjudication. As laid down by the Hon'ble Supreme Court in the case of Vishal Noble Singh vs. State of Uttar Pradesh & Anr., reported in 2024 (2)

Supreme 446 that while entertaining an application for quashing under section 482 of the Code of Criminal Procedure, 1973 at the initial stage, the Court was to see as to whether the uncontroverted allegations prima facie established the offence. Criminal offence could not be utilized for any oblique purpose. Court should quash those criminal cases where chances of an ultimate conviction were bleak and no useful purpose would be served by continuation of a criminal prosecution. Criminal case could not be lodged to recover money under coercion and pressure. The instant case was foisted upon the petitioners in order to recover Rs. 13,97,569/- and the complainant/opposite party suppressed the fact that there had been a long standing and continuous business transaction with the petitioners. In this regard, reliance was placed on the decision passed by the Hon'ble Supreme Court in the case of Deepak Kumar Shrivastava & Anr. v. State of Chattisgarh & Ors., reported in 2024 (2) Supreme 471 that a criminal proceeding should not be allowed to continue where object to file a complaint was not for criminal prosecution but for recovery of money under coercion and pressure. No reason was furnished either to explain the inordinate delay in filing the complaint. The inordinate delay of 3 years in lodging the instant complaint, for which no explanation had been furnished, indicated that the allegation in the instant case was nothing but an afterthought. Civil dispute could not be given a cloak of criminal offence. Non-payment of dues and non-supply of goods did not make out an offence of cheating. It could at best amount to a breach of contract, which might be agitated before the civil Court. It was trite law as laid down by the Hon'ble Supreme Court in the case of Prakash

Agarwal v. Ganesh Benzoplast Ltd. and Anr., reported at 2023 (3) Supreme 535 that purely contractual dispute between the parties could not be given a cloak of a criminal case under Sections 406/420 of the Indian Penal Code, 1860. The instant case would also have to be adjudged in view of the observations made by the Hon'ble Supreme Court in the case of Usha Chakraborty and Anr. V. State of West Bengal and Anr., reported at (2023) 1 Supreme 545 that civil disputes could not be given a cloak of criminal offence and permitting continuance of criminal proceedings against the petitioners would result in abuse of process of Court and would also lead to miscarriage of justice.

3. Leaned counsel for the complainant/opposite party submitted as follows. The instant revisional application was misconceived and liable to be dismissed in law as well as in the facts and circumstances of the case as the petitioner had not approached the Hon'ble Court with clean hands and suppressed material facts. In the case of Amit Kapoor v. Ramesh Chander (2012), the Supreme Court highlighted the scope of revision under Sections 397 and 401 CrPC read with Section 482 CrPC, where it was stated that if one looked into the judicial pronouncements of this Court, it appeared that the revisional jurisdiction could be exercised where the judgements under issue were hugely inaccurate, there was no adherence with the provisions of law, the recorded finding was not supported by evidence, relevant evidence was omitted, or judicial discretion was used arbitrarily or perversely. In the present case the Magistrate enquired into the matter not only on the basis of mere deposition of the complainant, but also scrutinized the documents

during enquiry and after being prima facie satisfied the Court issued the process against the petitioner under 204 CrPC. It was well settled principle that at the time of enquiry under section 200 CrPC the Magistrate had only apply his mind to ascertain whether the complaint had made out a case prima facie or not and once the Magistrate issued process after considering the same, it was not the abuse of the process of law. There was no scope for a revision. The petitioner in his written submission, inter alia, tried to make out his defence that the mandatory provision under Section 202 CrPC had not been complied. The learned Magistrate substantially complied with the requirement of inquiry under Section 202 of the CrPC. Obviously, in the impugned order it was not stated like magic words that “inquiry was held under Section 202 of the Cr.PC.” But, in substance the learned Magistrate held an inquiry under Section 202 of the CrPC and issued process against the accused persons including the petitioner. In *Vijay Dhanuka vs. Najzma Mumtaz* reported at 2014 (14) SCC P. 638, the Hon’ble Court observed that this exercise by the Magistrate, for the purpose of deciding whether or not there was sufficient ground for proceeding against the accused, was nothing but an inquiry envisaged under Section 202 of the Code. The petitioner wrongly interpreted that the petitioners were residing beyond the jurisdiction of the learned Magistrate. In this context, it was submitted that the accused company had its registered office at 12 Government Place (East) and the other accused had their offices there. As such, the provisions of Section 202 Cr.PC did not attract. The petitioner in his written submission also defended his case that the instant criminal case was a counterblast of the money suit

filed by the petitioner, which was not true and it could not be decided without full trial of the instant complaint case. The accused company filed Money Suit 430 of 2014 in the Court of learned 7th Judge/Bench of the City Civil Court at Calcutta purposely for obtaining stay from the Court on the ground of 'Civil disputes'. The said suit had already been 'dismissed' as per information given by the learned Registrar by City Civil Court, Calcutta. Admittedly, the petitioner had sold 30 M. Ton yellow peas and pulses to the opposite party. The accused/petitioner induced the petitioner for the payment in advance and the petitioner issued false delivery order No. 06624 dated 10.01.2011, but delivered on 110 bags of yellow peas containing 50 kgs. each. Thereafter, on 25.01.2011, further issued delivery order no. 07002 dated 25.01.2011 for 50 M. Ton upon payment in advance, but supplied only 470 bags of yellow peas containing 50 kgs. each to the opposite party in utter breach of trust with sole intention to make wrongful gain. As the petitioners had cheated so many businessmen, the news circulated in various newspapers. The power to quash the complaint case was to be exercised very sparingly and in rarest of the rare case. Reliance was placed on the State of Haryana and Ors. vs. Bhajan Lal and Ors., reported at 1992 Supp. (1) SCC 235, Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors. reported at (2021) SCC Online SC 315, (2005) 4 SCC 370, Iqbal Singh Marwah and another vs. Meenakshi Marwah and another, (2002) 1 SCC 555, Kamaladevi Agarwal vs. State of West Bengal and others. Thus, it was clear from the case laws referred hereinabove that it was not a strict rule of law

that if a civil suit was filed for a dispute between the parties, criminal prosecution could not be initiated for the same dispute.

4. I heard the learned counsels for the accused petitioner and the complainant opposite party, perused the revisional application and the written notes of submissions.

5. First, on the question of compliance of the provisions of Section 202 of the Cr.P.C., there is a patent non-compliance in respect of accused nos. 2, 3 and 4, who are the petitioner nos. 1 and 2 herein. Clearly, the residential addresses of the petitioners admittedly provided in the petition of complaint were beyond the territorial jurisdiction of the learned Trial Court. Thus, an inquiry as contemplated under Section 202 of the Code ought to have conducted. But, there was no indication in the order issuing process that an enquiry was done and the Magistrate had applied his mind in this regard.

6. It is true that the allegation of cheating and criminal breach of trust and the other connected allegations arose out of a commercial transaction. It is also trite law that such criminal cases often arise out of commercial transactions. If a criminality is made out, mere pendency of civil proceeding would not come in the way of sustaining such criminal proceeding.

7. Therefore, for deciding this lis, it is necessary to find out whether a prima facie case is made out or not in the instant criminal proceeding.

8. Incidentally, it is the case of the complainant that the civil suit filed in this regard was dismissed for default.

9. Be that as it may, the allegations in the petition of complaint are that the petitioners induced the complainant to make the advance payment of nearly Rs. 14,00,000/- for supplying 30 Metric Tons and 50 Metric Tons of yellow peas vide two delivery orders. However, the petitioners supplied only 110 bags of yellow peas weighing about 50 kg. each and 470 bags of yellow peas weighing about 50 kg. each out of the total 80 Metric Tons in the first week of March, 2014. The petitioners refused to supply the remaining goods.

10. On the contrary, it is the case of the accused petitioners that yellow peas were agreed to be supplied upon making full payment. Initially, it was agreed that the complainant would bear the additional charges in case of default in lifting the agreed quantity of yellow peas within the stipulated period. The time limit for making payment was extended and after the delivery of goods, the time limit for lifting the ordered quantity of yellow peas was extended on condition to pay the storage and fumigation charges. However, the complainant allegedly refused to lift the remaining portion of the yellow peas due to sharp fall of price of yellow peas in the market. The petitioner issued a notice dated 08.03.2014 to clear the dues of nearly Rs. 7,00,000/- towards storage and fumigation charges and lifting the remaining portion of yellow peas, but the same was not done.

11. Thus, it appears that there was part satisfaction of the order and at least a part payment by the other side.

12. Pertinently, a second order had been placed after the first order. This has to be read in the light of the petitioners' stand that there were continuous business transactions between the parties.

13. The facts as referred to above indeed have a predominantly civil flavour. These disputes were for the aggrieved parties to have got adjudicated in a civil proceeding.

14. The Hon'ble Apex Court has, in numerous cases, frowned upon the practice of trying to make a predominantly civil dispute look like a criminal offence.

15. As was held by the Hon'ble Apex Court in Deepak Kumar Shrivastava (supra), a criminal proceeding should not be allowed to continue where the object to file a complaint was not for criminal prosecution but for recovery of money under coercion and pressure. Reference is also made to the decision in the case of Prakash Agarwal (supra).

16. If carefully read in the light of the above referred decisions of the Hon'ble Supreme Court, it appears that the allegations made in the petition of complaint as supported by the initial depositions at best make out a civil dispute. No case of cheating or criminal breach of trust is prima facie made out.

17. There is no case made out in the petition of complaint or in the initial deposition about the offences alleged under Section 504 or 506 of the Penal Code either.

18. Significantly, there is also an unexplained delay in filing the petition of complaint. Although the transactions ended in 2011, it was stated in the petition of complaint that in the first week of March, 2014, the accused persons refused to supply the remaining goods or return the money. This averment, without documentary support, seems to have been made only to extend the cause of action to a period in 2014.

19. Considering the above referred facts and circumstances, it would indeed be an abuse of the process of Court if the main proceedings are allowed to continue.

20. In view of the above discussions, the proceedings in Complaint Case No. CS – 0398334/2014 pending before the learned Chief Judicial (Metropolitan, earlier) Magistrate, Calcutta under Sections 406/420/504/506 of the Indian Penal Code, 1860 are quashed. The application is, thus, disposed of.

21. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)