

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 3540 of 2022

IA No: CRAN 1 of 2023

With

Jitendra Kumar Arya

Vs.

M/s. Slekha Designer Private Limited

For the Petitioner

:Mr. Anirban Dutta, Adv.

Mr. S. Abedin, Adv.

Mrs. Chitra Abedin, Adv.

Ms. Pooja Singh, Adv.

Last Heard on

:25.06.2025

Judgment on

:04.07.2025

Bibhas Ranjan De, J.

1. The instant revision application has been preferred assailing the Order dated 04.02.2022 passed by the Ld. Additional Chief Metropolitan Magistrate, Calcutta, in connection with complaint case no. 226 of 2022 whereby Ld. Magistrate was pleased to take cognizance of the complaint under Sections 406/409/420/120B of the Indian Penal Code (hereinafter IPC) and transferred the same to the Court of Ld. Metropolitan Magistrate, 13th Court, Calcutta for disposal.
2. The entire narrative which gave rise to the impugned proceeding in a nutshell is to the effect that the complainant company/opposite party had a business relation with the company namely M/s. GBMS Retails (P) limited (hereinafter company) for a period between September 2018 to October 2018, where the opposite party delivered goods & textiles worth Rs. 6,26,222/-(Rupees six lakhs twenty six thousand two hundred and twenty two only) along with 15 tax invoices. It has been further alleged that goods worth Rs. 2,72,262/- (Rupees Two lakhs seventy two thousand two hundred and sixty two only) were misappropriated and the same was

communicated to the company. But despite such communications the accused persons continued to neglect and ignore the payment against long standing dues and eventually refused to pay the due amount. As a sequel, the opposite party had filed a complaint before the Court of Ld. Additional Chief Metropolitan Magistrate, Calcutta under Section 200 of the Code of Criminal Procedure (hereinafter CrPC) alleging commission of offences under Sections 406/409/420/120B of the IPC who *in tern* was pleased to take cognizance and transfer the same before the Court of 13th Metropolitan Magistrate, Calcutta, for disposal. The petitioner eventually surrendered before the Ld. Magistrate and was enlarged on bail on 09.06.2022. Being aggrieved with the impugned proceedings, the petitioner approached this Court with a prayer for exercise of extraordinary jurisdiction.

- 3.** Mr. Anirban Dutta, Ld. Counsel, appearing on behalf of the petitioner at the very outset has vehemently contended that the petitioner was a Director of the Company for a very short period of time and his role was very much restricted. He was not involved in the day to day functions of the said Company.

A bare perusal of the complaint lodged at the behest of the opposite party would also suggest that there is no averment in the said complaint with regard to the exact role of the petitioner in committing the offences alleged. Hence, it would be a gross abuse of process of law if the petitioner is entangled in the impugned criminal proceeding. Alternatively, Mr. Dutta has submitted that the written complaint was filed on 05.07.2022 whereas the cause of action arose on 18.09.2018. Therefore, after almost a gap of four (4) years, the opposite party had filed the complaint but no reason for such inordinate delay has been stated therein, which is not permissible in the eye of law.

4. Before parting with, Mr. Dutta has remarked that it is an admitted position of fact that an amount of Rs. 3,53,960/- has been paid out of the entire due amount of Rs. 6,26,222/. The factum of part performance and part payment has been duly admitted by the complainant in the petition itself. Therefore, Ld. Counsel has tried to make this Court understand that since there is no intention from inception to cheat the opposite party, no offence is made out.

5. In support of his contention, Mr. Dutta has relied on the following cases:-

- ***Naresh Kuma vs. State of Karnataka, AIROnline 2020 Kar 2795***
- ***Manish vs. State of Maharashtra, AIRONLINE 2025 SC 204***
- ***Lalit Chaturvedi vs. State of Uttar Pradesh, AIRONLINE 2024 SC 366***
- ***V.Y. Jose and anr vs. State of Gujrat and anr, AIR 2011 SC (CRIMINAL) 1887***

6. None appears on behalf of the opposite party.

Analysis:-

7. Having meticulously considered all the assertions made by the Ld. Counsel along with the cases relied thereon, I feel that it would be necessary to first look into the averments of the complaint made at the behest of the opposite party. Upon a thorough and exhaustive examination of the complaint, it is quite clear that the main grievance of the opposite party is with regard to failure of the accused to pay the outstanding balance amount in spite of repeated demand of the opposite party/complainant. The opposite party stated that supplies

were made with regard to goods and textiles worth Rs. 6,26,222/- between the period from September 2018 to October 2018. The accused had made part payments amounting to Rs. 3,53,960/-. Thereby leaving a due balance of Rs. 2,72,262/-.

- 8.** Therefore, if it is assumed that the assertions made in the complaint are correct even then that could not justifiably attract any of the ingredients to constitute an offence under Section 420 of the IPC in absence of initial deception. Moreover, it is settled that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously as every act of breach of trust may not result in penal offence of criminal breach of trust. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. The distinction between mere breach of contract and offence of criminal breach of trust and cheating is a fine one. In such cases, the intention of the accused at the time of inducement must only be looked into. The subsequent conduct is not the sole test.

- 9.** The tone and tenor of the complaint and the averments made therein fail to spell out the details and particulars and the necessary ingredients to prima facie establish the offences alleged. It would also be pertinent to mention that the attempt to ignite criminal jurisdiction as a recovery proceeding has been deprecated by the Hon'ble Apex Court in a plethora of decisions.
- 10.** In the premises set forth above, continuance of the impugned criminal process for oblique purpose is nonest in the eye of law and only amounts to abuse of the process of Court. Therefore, I find no other option but to quash the proceeding impugned in this revision application.
- 11.** As a sequel, the instant revision application being no. CRR 3540 of 2022 stands allowed.
- 12.** The proceeding in connection with complaint case no. CN 226/2022 stands quashed against the petitioner.
- 13.** Connected applications, if any, stand disposed of accordingly.
- 14.** Interim order, if there be any, stands vacated.
- 15.** Case diary be returned at once.

- 16.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 17.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]