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

Present:

Justice Bibhas Ranjan De

C.R.R. 4070 of 2024

With

C.R.R 4071 of 2024

Ram Sharan Singh & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners :Mr. Krishnendu Bhattacharya, Adv.
Mr. Anirban Kumar Banerjee. Adv.

For the Opposite Party No. 2 :Mr. Hareram Singh, Adv.
Mr. Saptarshi Rajan Chatterjee, Adv.

Last Heard on :19.06.2025

Judgment on :04.07.2025

Bibhas Ranjan De, J.

1. At the very outset it would be pertinent to mention that for brevity of discussion both the revision applications arising out of self same cause of action have been taken up together for disposal via this common judgment.

2. Both the revision applications being CRR 4070 & 4071 of 2024 have been preferred at the behest of the petitioners with a prayer for quashment of the impugned criminal proceedings being complaint case no. 80903 of 2024 (in relation with CRR 4070 of 2024) and complaint case no. 79775 of 2024 (in relation with CRR 4071 of 2024) presently pending before the Court of Ld. 16th Metropolitan Magistrate (presently 16th Judicial Magistrate), Calcutta for the alleged offence under Section 420 of the Indian Penal Code (hereinafter IPC) corresponding to Section 318(4) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter BNS).

Background:-

3. The genesis of the impugned prosecution are the petitions of complaint filed at the behest of the opposite party no. 2 in terms of Section 200 of the Code of Criminal Procedure

(hereinafter CrPC) before the Court of Ld. Chief Metropolitan Magistrate, Calcutta alleging *inter alia* that the complainant company under the name and style of True Blue Asset Services Private Limited was engaged in business of financing. The Petitioners /accused approached the complainant company for financial assistance with a representation that they are in urgent need of financial assistance and they have very good reputation and good will in the market. To add to that assurance of timely repayment of the loan amount in compliance with the terms and conditions of the argument without any default was also made by the petitioners. Thereafter, the opposite party no. 2/complainant company upon being satisfied with background and credentials of the petitioners sanctioned a loan through conditional sale agreement being Agreement No. TBASS00326 dated 12/20/2020 for the Asset XE210, Engine/Machine/Serial Number 807441900 for the asset. Accordingly, two loan contracts being (TBASS00321) and (TBASS00326) were executed, each for Rs. 38,79,824/- totaling to Rs. 77,59,648. But soon after availing the loan facilities, the petitioners started defaulting in repayment only after making payment of few months' installments. Inspite of several follow ups and repeated reminders and several opportunities being given to the petitioners to repay outstanding amount, on each and every occasion the accused persons denied repayment on different pretexts and lastly refused to repay the overdue amount i.e. Rs. 28,20,000/- & Rs. 26,79,000/- respectively including penal interest and bouncing charges. Finally, a legal notice dated 21.03.2024 was sent to the petitioners demanding repayment of the outstanding amount within 7 days from the said receipt of notice. But inspite of service the petitioners did not give any response and being aggrieved finding no other alternative the opposite party no. 2 initiated the impugned criminal proceedings before the Court of Ld. Chief Metropolitan Magistrate, Calcutta.

Argument advanced:-

4. Mr. Krishnendu Bhattacharya, Ld. Counsel, appearing on behalf of the petitioner to begin with has argued that the order of taking cognizance evidently unveils no application of any judicious mind for its inherent susceptibility as Ld. Magistrate has failed to consider that the petition of complaint at best reveals mere breach of contract. The existence of part payment only gives rise to a civil dispute that at best warrants intervention of competent Civil Court for recovery of money and machinery. In this regard, Mr. Bhattacharya has further added that the petition of complaint manifestly demonstrates that the accused persons including the company are situated outside the territorial jurisdiction of Ld. Trial Court. Whereas Section 202 of the CrPC clearly mandates upon the Ld. Magistrate to conduct enquiry in such cases. But no enquiry in terms of Section 202 of CrPC was ever directed by the Ld. Magistrate and process was issued defying settled proposition of law which is a gross abuse of the process of Court.

5. Ld. Counsel has further continued that the complainant/opposite party 2 herein issued statement of accounts under their letter head which evidently show that total amount of loan granted to the petitioner for two contracts amounted to Rs. 77,59,648/- and till 20.03.2023 the complainant has received Rs. 38,95,600/-. But, such receipt of substantial amount has maliciously been suppressed in the petition of complaint as well as in the statement made before the Ld. Magistrate.

6. In his concluding statement, Mr. Bhattacharya has tried to make this Court understand that the assertion made in the complaint as well as in the pre-summoning evidence led by the opposite party no. 2 primarily pertain to breach of agreement *vis-a-vis* non-payment of loan as no ingredients can be made out to establish the condition and incidents of penal liability set out under Section 420 of the IPC [corresponding to 318(4) of the BNS] because the offence of cheating cannot be established if the complainant is unable to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. But in the instant case there are no allegations to the effect that the petitioners had engaged in dishonesty, fraud or intentional inducement to cause delivery of any property to them by the opposite party no. 2. Therefore, it would be crystally clear that only an attempt has been made by the opposite party no. 2 herein to invoke criminal jurisdiction by filing a vexatious criminal complaint camouflaging allegations which are ex facie civil in nature with the sole motive to recover the due amount.

7. With a view to bolster his submission, Mr. Bhattacharya has taken assistance of the following cases:-

- ***Graves Cotton Limited and others vs State of West Bengal and another, 2023 SCC OnLine Cal 454***
- ***Satishchandra Ratanlal Shah vs. State of Gujrat and another, AIR 2019 Sc 1538***

8. Per contra, Mr. Hareram Singh, Ld. Counsel, appearing on behalf of the opposite party no.2 at the very outset has vehemently contended that petitioners have deliberately tampered with the GPS system of the financed assets with mala fide intention to prevent the opposite party no. 2 from locating and recovery its rightful property. This act of tampering is not merely a civil breach but demonstrate a clear criminal intent to dishonestly conceal the asset for which financing was provided.

9. Mr. Singh has further added that the petitioners consistently refused to share information regarding the number of hours the asset has been operated and the revenue generated from it despite repeated requests from the opposite party no. 2.

This deliberate withholding of information is a clear indication of the petitioners' dishonest intention from the inception of the loan agreement. Such actions made at the behest of the petitioners clearly demonstrate the ingredients of the offence under Section 318(4) of the BNS (Corresponding to Section 420 IPC). Therefore, Mr. Singh has suggested that acts that include tampering with GPS, refusal to share operational details and threatening of company representatives further establish the dishonest intention that existed from the inception.

10. Before parting with, Ld. Counsel has tried to make this Court understand that the Ld. Magistrate committed no error in taking cognizance of the offence. In support of this contention, he has referred to the order dated 09.07.2024 which clearly indicates that the Magistrate's conclusion was based on careful examination of the documents and testimony which revealed the dishonest intention of the petitioner from the inception of the transaction.

11. In order to further substantiate his plea, Ld. Counsel Mr. Singh has referred to the case of ***Y. Abraham Ajith and***

others vs Inspector of Police, Chennai and another, (2004) 8 Supreme Court Cases 100.

<u>Analysis:-</u>

12. Before delving into meticulous examination of the issue involved in these applications, I feel it to be apt to first discussed the ratio of the cases relied on behalf of the parties.

13. In the case of ***Graves Cotton Limited*** (supra) Hon'ble Co-ordinate Bench of this Court was of the opinion that if in a case where the complaint itself fails to make out any offence, added to that the examination under Section 200 of the CrPC also do not attract to any culpability or accused persons so named, mere non-compliance of Section 202 of CrPC would never deter the High Court from exercising its inherent powers in such cases where persons are asked to face a criminal trial without any substantive cause of action being made out.

14. In the case of ***Satishchandra Ratanlal Shah*** (supra) the Hon'ble Apex Court deprecated the practice of criminalizing civil disputes, such as breach of contractual obligations. It was further held that the intention of the legislature was to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements which resulted in involuntary and inefficient transfers.

15. Per contra, Mr. Singh has relied on the case of ***Y. Abraham Ajith*** (supra). In the written note of argument filed on behalf of the opposite party no. 2, Ld. Counsel has quoted certain observation of the Hon'ble Apex Court which runs as follows:-

> *" The manipulation of property that was subject to a financial agreement, particularly attempts to conceal its whereabouts, is strong evidence of a dishonest intention at the time of entering into the agreement."*

16. However, after going through the above referred judgment it has come to my utter despair that no such observation has ever been made by the Hon'ble Apex Court in that case. Moreover, the issue involved in that case was of domestic violence and naturally the factual build up of that case has got no bearing with the case at hand.

17. After carefully weighing the competing arguments and delving into the Core of this intricate matter, I have determined that this Court is now called upon to resolve the following two pivotal issues:-

i. Does the non-compliance with the provisions enshrined in Section 202 of the CrPC, invariably result in the quashing of the entirety of the judicial proceedings?

ii. Could the deliberate manipulation of a subject property in a financial agreement, in the form of concealing its where about, potentially invoke the grave ramification of the offence of cheating under Section 420 of the IPC [Section 318 (2) of BNS].

18. Before embarking upon thorough exploration of this matter, it would prove most illuminating to revisit the provision of Section 420 IPC which runs below:-

> ***"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. It is axiomatic that the core object behind Section 202 CrPC (225 of the BNSS) is to enable the Magistrate to scrutinize the allegation made in a complaint carefully, before issuing process against the accused. This scrutiny aims to prevent the issuance of process in cases where there is no prima facie case, thereby avoiding unnecessary harassment and protecting the accused from frivolous proceedings.

20. Object and reason of 2005 amendment is to prevent filing of any false complaint against person residing at far off places simply to harass them. The amendment was made in order to protect innocent persons from harassment by unscrupulous persons. The amendment makes it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction, he shall enquire into the case himself or direct investigation to be made by a police person or by such other person as he thinks fit, finding out whether or not there are sufficient grounds for proceeding against the accused.

21. Therefore, Amendment Act 2005 makes it obligatory upon the Magistrate to find out whether or not, there was sufficient ground for proceeding against the accused before issuing process in such cases where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned.

22. In a scenario where Magistrate has conducted an enquiry by recording evidence on solemn affirmation, it is my considered opinion that such a proceeding cannot, by any reasonable interpretation, be construed as a non-compliance with the provisions of Section 202 of the CrPC (225 of the BNSS), particularly in the light of amendment introduced by the Act 2005.

23. In the case at hand, on receipt of complaint, Chief Metropolitan Magistrate, Calcutta took cognizance on perusal of the materials on record and transferred the case to Metropolitan Magistrate 16th Court, Calcutta for inquiry and disposal according to law. Ld. Metropolitan Magistrate then inquired about allegation made in the complaint by recording evidence on solemn affirmation as well as verifying the documents filed before the Court, under Section 202 of

CrPC (225 of the BNSS), before issuance of process under Section 204 CrPC (227 of BNSS).

24. In this situation, I am of the view that unless prejudice is caused to the accused, the Magistrate's non-compliance with Section 202 of CrPC (225 of the BNSS), does not vitiate the proceedings nor render them invalid – such a procedural lapse, in the absence of demonstrable harm, remains a technical irregularity rather than a fatal flaw undermining the Judicial Process.

25. In the aforesaid view of the matter, the first issue is answered against the accused/petitioner herein.

26. We now turn to gravamen of the second issue – the allegations encapsulated within the complaint, which is said to delineate an offence of cheating under Section 420 of the IPC [318 (4) of BNS].

27. Each and every allegations set forth within the complaints are delineated within the bounds of paragraphs 3 to 13. Those are reproduced below:-

> *"3. That the accused person approached the complainant company and represented that he/she is in urgent need of financial assistance and further represented that he/she have very good reputation and goodwill in the market, if the complainant company*

provides him/her financial assistance then he/she will repay the loan amount on time without any default and will abide by the terms and conditions. Thereafter, having satisfied about the background and other satisfactory relevant reason, Le proof of identity, residence and in sound sources of income and thereafter upon believing the representation to be true and genuine, the complainant company deeply impressed by such glorious and colorful representation and reposed faith and trust upon the accused persons and acceded to his/her proposal and pleased to sanction the Loan through Conditional Sale Agreement being Agreement No. TBASS00326 Dated 12/20/2020 for the Asset XE210, Enone/Machine/Serial Number 807441900 in favor of the accused person upon the unambiguous assurance and/or promises made by the accused person to fulfill all terms and conditions as well as payment for the same.

4. That in order to create faith upon the complainant company the accused person furnished and submitted several documents to show that the said accused person was a person of repute, having permanent place of residence and also showed his/her income proof, which showed his/her financial capacity.

5. The accused persons further fraudulently agreed and undertook that the said amount would be repaid in time. The said agreement between the complainant company and the accused persons was executed at the Complainant Company's office which is under the jurisdiction of this Learned Court.

6. That the complainant believing upon the representation to be true made by the accused person and also having assurances of timely repayment the *granted Loan in favour of the accused person, and thereafter accused person started using and or enjoying the Loan facility. The accused shail make to fulfill all terms and conditions. as well as the payment for the same but the accused person have failed to which shows the malafide/dishonest intention to cheat the Complainant Company as well as public money.*

7. Unfortunately and shockingly, the accused persons after making payment of only few monthly installments the accused deliberately failed and/or neglected and/or refused to pay the monthly installment to the complainant. On several occasions the complainant repeatedly requested the accused persons to make payment of the said loan amount but neither payment was made nor any reply to the said request was given to the complainant and huge amount of loan installments have fallen due which caused wrongful loss to the complainant and Wrongful gain to the accused persons.

8. Even it is being found that the accused have either dismantled or manipulated with the GPS of the asset with malafide intention to hide the location of it.

9. The Complainant Company has requested the accused to share the number of hours the asset has runned and the revenue generated by it but the accused did not turn up with any reply.

10. That thereafter using the said loan facility the accused person did not repay the same and in spite of several follow ups and repeated reminders and several opportunities being given to the accused person to repay the said loan/outstanding amount but on each and every occasion the accused person started buying time on different pretext and lastly refused to repay the *loan/overdue amount i.e. Rs. 2820000/-in the said loan account including penal interest and bounting charges as on date to the complainant company. And also Accused Threating to the representative of the Complainant Company if he/she requested for making payment again and visit accused persons house then the representative of the complainant will face dire consequence in future.*

11. That being entrusted by way of said loan, issued by the complainant, the accused person have dominion over same and dishonestly used as well as misappropriated the same, which is absolutely public money and the accused person converted the same for his own wrongful use causing wrongful gain to him and huge wrongful loss to the complainant company.

12. By a legal notice dated 21.03.2024 which was posted on 22.03.2024, the Complainant through his Learned Advocate send notice to the accused persons through REGD. Post and thereby calling upon the accused persons to repay the outstanding loan amount i.e. Rs. 2820000/- due as on 20.03.2024 along with up to date interest & other charges as agreed within 7 days from the said receipt of this notice but inspite of service of the said notice the accused persons did not pay the said amount to the complainant company which clearly show their malafide intention from the very inception to cheat the complainant company is annexed hereto and collectively marked as Annexure "B".

13. What has been canvassed in the aforesaid paragraphs it is palpable and glaring that the accused person since inception has got no intention to repay the said Loan Facility amount and to cheat the complainant company and by making representation and assurances

> *which subsequently turn out to be false induced the complainant company to part with the said amount and thereby converted the same for his own wrongful use causing wrongful gain to him and huge wrongful loss to the complainant and thereby cheated the complainant to the tune of Rs. 2820000/-."*

28. The Hon'ble Apex Court in various landmark decisions has made a very clear suggestion that the High Court's while exercising its power under Section 482 of the CrPC **is not required to conduct a mini trial** as this is not the stage where the prosecution/ investigating agency is required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the Hon'ble Apex Court handed down that if the High Court while exercising inherent jurisdiction under Section 482 of the CrPC makes an observation that the charges against the accused are not proved, by going in detail in the allegations and the material collected during course of the investigation against the accused, then they will commit material err in doing so.

29. As at the stage of discharge and /or while exercising the power under Section 482 of the CrPC, the Court has a very limited jurisdiction and is only required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not." In addition to that the Hon'ble Apex Court has further held that at the **initiation of the Criminal Proceedings, whether the criminal proceedings are malicious or not, is not required to be considered at the stage of quashing as it is required to be considered only at the conclusion of the Trial**. The only material requirement which is to be considered is a prima facie case and the material collected during investigation, which warrants the accused to be tried.

30. It is trite law that a mere failure to honour contractual term does not attract the offence of cheating. But, the manipulation of subject property in a loan transaction made under agreement for conditional sale may attract the offence of cheating under Section 420 IPC [318 (4) of BNS], but only if the essential elements of the provision are satisfied i.e. initial fraudulent intent.

31. In the case at hand, there is a specific allegation of manipulation of G.P.S of asset showing prima facie element of intention to deceive the lender at the time of entering the agreement unlike mere breach of contract or failure to fulfill contractual obligations.

32. In light of the above discussion, I am unable to interfere with impugned proceeding at this stage by invoking power under Section 482 of CrPC as all the material contradictions with regard to the alleged occurrence is a subject matter of trial and from careful perusal of the available evidence this Court cannot conclude that the allegations made in the complaint do not prima facie make out any offence. Nor can it conclude that the allegations made therein are patently and inherently improbable which will make the instant revision application a fit case for quashing as per the exhaustive guidelines of the Hon'ble Apex Court. And to add to that, in the present case, the nature of allegation is not in respect to any breach of contract simpliciter.

33. To exercise the inherent power under Section 482 of the Cr.P.C is not the rule but it is an exception which can be applied only if it appears to the Court that miscarriage of justice would be committed if the trial is allowed to proceed further. This Court is also not oblivious to the settled proposition of law that this Court cannot function either as a

Court of appeal or revision and this power can only be exercised to prevent abuse of the process of the Court.

34. As a sequel, both the revision applications being no. CRR 4070 of 2024 & CRR 4071 of 2024, being devoid of merits, stand dismissed.

35. Connected applications, if any, stand disposed of accordingly.

36. Interim order, if any, stand vacated.

37. All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.

38. 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.]