IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3190 of 2015

Binod Kumar Bawri & Ors.
Vs.
The State of West Bengal & Anr.

For the Petitioner	:	Mr. Moyukh Mukherjee Ms. Sarmistha Basak Mr. P.D.Mukherjee Ms. Ankita Das Ms. Avantika Kahar Mr. Ayush Shaw
For the State	:	Mr. Rana Mukherjee, Ld. APP
Heard on	:	07.07.2025
Judgement on	:	05.08.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the impugned proceeding being GR case No. 2097 of 2012, presently pending before Learned Metropolitan Magistrate, 8th court Calcutta, the instant application has been preferred by the petitioner.

2. It is alleged in the F.I.R. that the accused persons including the instant petitioner hatched up a conspiracy among themselves and induced the complainant to supply fly ash of 2650 MT @ Rs. 1320/- per MTV, amounting to Rs. 36,10,464/- in favour of M/s. Krishna Overseas for supplying the same to M/S Calcom Cement Ltd. It is further alleged that M/s. Krishna Overseas intrude the complainant to represent it as consignor before the railway authority on the plea that the same would help them to clear the goods immediately. After the said quantity of fly ash reached to its destination, the accused no. 10 namely Dimbeswar Deka cleared the same by giving a false affidavit and handed over the same to M/S Calcom Cement Ltd. It is further alleged that even after receipt of the fly ash, the accused persons denied to clear the dues of the complainant and as such there is an outstanding amount Rs. 34,60,464/-.

3. Being aggrieved by the instant proceeding Mr. Mukherjee learned Counsel appearing on behalf of the petitioner submits that in it's usual course of business M/S Calcom Cement used to purchase fly ash from different concern for production of cement at its Assam Unit. Similarly, In the year 2011 in course of its business, said cement company entered into business transaction with M/S Krishna Overseas for purchasing 2582.60 MT fly ash which is used as raw material for production of cement. His specific case is that the above mentioned total transaction valued to an amount of Rs. 36,15,642/- and out of that amount said cement company made payment of Rs.28,47,475/- to M/S Krishna Overseas. His further contention is that M/S Calcom Cement Ltd. never made any direct business dealing with the complainant / opposite party herein, nor they had ever being under any obligation to make any direct payment to complainant/ opposite party herein. In fact M/S Calcom cement entered into business dealing with M/S Krishna Overseas and pursuant to such business dealing, it had placed purchase order, letter of intent and vendor registration form and M/s. Krishna Overseas accordingly supplied the demanded quantity of fly ash after complying with all necessary formalities to M/S Calcom Cement Ltd., and as such it had hardly any transaction and /or communication with the complainant/ opposite party herein.

4. Mr. Mukherjee further argued that the criminal courts are not supposed to act as money recovery agent. Petitioners were never aware nor was supposed to be aware of the mode and manner in which the business transaction had taken place in between M/S Krishna Overseas and the complainant company/opposite party. Therefore offence of cheating does not attract in the present context. Furthermore on a bare perusal of contents of the F.I.R., it is apparent that the petitioners herein were never entrusted with any property of the F.I.R. maker/ opposite party no. 2, which could have been misappropriated by the petitioners herein. In the absence of element of entrustment in favour of the petitioners and /or misappropriation thereof, no case of offence of criminal breach of trust can be said to have been made out.

5. He further submits that from a perusal of the aforesaid facts and circumstances of the case, it is evident that *mens rea* (guilty mind) from the very inception is completely absent, which is the most important ingredient of the offence of cheating and which in fact differentiates cheating from simplicitor breach of agreement. Merely because a person failed to keep promise subsequently, a culpable intention, right at the beginning, cannot be inferred. Mere use of the expressions like “cheating”, “deception” and "inducement" in the complaint is of no consequence in the absence of the ingredients thereof. In the instant case the story projected by the opposite party no. 2/complainant does not satisfy either of the ingredients of the offences of cheating, criminal breach of trust or criminal conspiracy. In such view of the matter further continuance of the instant proceeding qua the petitioners will be a mere abuse of process of court and as such the instant proceeding is liable to be quashed qua the petitioners herein, invoking Courts inherent jurisdiction under section 482 of Cr.P.C. to prevent miscarriage of justice and harassment of innocent persons.

6. Petitioner's counsel in support of his argument relied upon the following authorities:-

- ***i. Lalit Chaturvedi and others Vs State of UP and another, 2024 SCC Online SC 171***
- ***ii. Delhi Race Club Ltd. and others Vs State of UP and another , (2024) 10 SCC 690***
- ***iii. Medmeme, LLC and others Vs Ihorse BPO Solutions Pvt. Ltd., (2018) 3 SCC 374***
- ***iv. Naresh Kumar and another Vs State of Karnataka and another 2024 SCC Online SC 268***
- ***v. Satish Chandra Ratan Lal Shah Vs State of Gujrat and another (2019) 9 SCC 148***

7. In spite of service of summons Private Opposite Party no. 2 is not represented.

8. Mr. Rana Mukherjee learned Counsel appearing on behalf of the State placed the case diary and contended that after completion of investigation police have submitted charge sheet against the present petitioner/accused person and the truth will reveal only after conclusion of trial and it would not be proper to throw away the complaint at it threshold, invoking Court's jurisdiction u/s. 482 of the code. Accordingly he opposed the prayer for quashment.

9. I have considered submissions made by both the parties.

10. The present three petitioners have been arraigned as accused nos. 5,6 and 7 in the written complaint, being chairman and director of M/S Calcom Cement Ltd. The letter of intent annexed with the application clearly shows that the shipping terms were made in between the Krishna Overseas and Calcom Cement Ltd. and not with the private opposite party/complainant. It also appears from the statement of accounts filed by the Calcom Cement that the substantial portion of the consideration price, nearly about 75% have already been paid by the Calcom Cement in favour of Krishna Overseas. There is nothing to show that M/S Calcom Cement Ltd. ever made any direct business dealing with the complainant/opposite party, nor there appears to be any document to show that the Calcom Cement was under any obligation to pay directly to the complainant/opposite party. The letter of intent prima facie shows that M/S Calcom Cement entered into business dealing with M/S Krishna Overseas for purchasing fly ash for production of cement at its Assam unit and pursuant to such business dealings, it had placed purchase order, letter of intent and vender registration form and M/S Krishna Overseas on the other hand supplied the demanded quantity of fly ash to M/S Calcom Cement.

11. The materials collected during investigation also suggest that M/S Calcom cement is the ultimate purchaser and/or beneficiary of the said fly ash which the complainant opposite party might have supplied to M/S

Krishna Overseas. However though a substantial amount has already been paid by M/S Calcom Cement in favour of M/S Krishna Overseas, but it appears that the entire allegation is restricted to recovery of the amount by the opposite/party complainant from aforesaid M/S Krishna Overseas. In fact there is nothing to show that there was any privity of contract between the complainant firm and the firm of the present petitioners, namely Calcom Cement. In fact the petitioners herein have been arraigned, being director and chairman of Calcom Cement, though they do not have any connection with the business of the complainant/opposite party.

12. It is clear from the allegations made in the complaint and materials available in the case diary that the petitioners' company Calcom Cement entered into an agreement with the Krishna Overseas who is accused no. 1 in this complaint case on certain terms and conditions. If it is the allegation of the complainant/opposite party that accused no. 1 and it's officials have misdirected the complainant in delivering the said fly ash, then the present petitioners being the office bearer of M/S Calcom Cement as well as company namely M/S Calcom Cement cannot have any criminal liability to be arraigned as an accused. Moreover it is not the case of the complainant that Calcom Cement have not made any payment either to the accused no. 1 or to the complainant nor there is any allegations against the present petitioners that they have induced the complainant to enter into an agreement with accused no. 1/company, in order to cheat him. In fact the allegations levelled against the accused no. 4/company and the present petitioners namely accused no.5, 6 &7 are bald and the materials that are available from investigation, even *prima facie* does not suggest that there was any conspiracy or connivance in between the accused no. 4 and/or it's officials with accused no.1 and/or it's officials. If the accused no.1 have committed any breach of contract the present petitioners cannot be held liable. Moreover in order to attract section 420 of the IPC, it is necessary to show that the petitioners and its company had fraudulent and dishonest intention at the time of making the contract with the supplier or with any other person. It appears from the submissions made on behalf of the parties that the complainant/opposite party no.2 tried to arraign M/S Calcom Cement and its management as accused in connection with the instant case, since they have not taken necessary steps to ensure payment of the complainant/opposite party for supplying the quantity of fly ash to accused no. 1 M/S Krishna Overseas. Now even if it is presumed that the petitioners have failed to take necessary steps to ensure payment of the complainant/opposite party for supplying the questioned quantity of fly ash to accused no. 1, then also it does not give rise to any cause of action to initiate criminal proceeding against the present petitioners.

13. Looking to the complaint and the grievance made by the complainant herein and having regard to the materials collected during investigation, it is clear that the dispute and grievances have arisen out of a transaction in between the complainant/opposite party and the accused no. 1 and its management. Materials collected during investigation and the documents filed by the petitioner in support of payment of substantial portion of money, shows that there is no factual foundation of the allegation of initial deception. The allegations in the FIR, made on the basis of inferences drawn by the complainant, against the present petitioners from subsequent failure of the payment, if any, by accused no. 1 in favour of the complainant and/or for making payment of the balance amount, if any. The basic fact constituting deception by way of false representation on the part of the petitioners or their company/accused no.4, at the outset of initiation of transactions has neither been expressly stated nor otherwise suggested in the FIR and the same also does not appear from the evidentiary materials collected by the investigating agency. When a substantial portion of the amount paid by the petitioners and their company, is not in dispute, it cannot be said that the petitioners or their company had no intention to pay right from the beginning of the transaction. Thus, initial deception which is the basic ingredient to constitute the offence of cheating is conspicuously absent in the present case and the case bereft of the basic ingredients of the offence of cheating i.e. initial deception.

14. In **Indian Oil Corporation of India Vs. NEPC India ltd. & other** reported in **(2006) 6 SCC 736** Supreme Court categorically observed that any effort to solve civil dispute and claims which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged. In fact the Apex Court in a number of cases has cautioned against criminalizing civil dispute such as breach of contractual obligation. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducement, which resulted involuntary and inefficient transfer under section 415 IPC. In the instant case, neither there is any allegation nor any material placed before me to show any fraudulent or dishonest or deceptive inducement by the petitioners upon the defacto complainant.

15. In ***Lalit Chaturvedi and Ors. Vs. State of UP and another*** reported in **2024 SCC Online SC 171** the Apex Court clearly held that the criminal proceeding cannot be degenerated into a recovery proceeding. In the instant case the complainant in fact wanted to recover the price of fly ash and for which he implicated the ultimate beneficiary of the fly ash and its management to create pressure upon them to get the aforesaid payment. In fact by implicating accused no. 4 and its management namely the present petitioners herein, who are accused no. 5, 6 and 7, the complainant has made a desperate effort in dressing up a civil dispute relating to alleged breach of contract by accused no. 1 and /or its management, into a criminal proceeding by making out a case of non-payment of price of the supplied materials.

16. Moreover, in order to constitute offence under section 406 or 420 of the IPC *mens rea* i.e. intention to defraud or the dishonest intention must be present and in the case of cheating it must be there from the very beginning or inception. The plain reading of the complaint, it reflects the allegation of committing offence by cheating as defined under section 415 of the IPC punishable under section 420 of the IPC by the present petitioners, and if that be so then in the same breathe it cannot be said that the petitioners have also committed offence of criminal breach of trust as defined and explained in section 405 of the IPC, punishable under section 406 of IPC.

17. It is true that court at this juncture is not supposed to consider the defence of the accused or the documents supplied by the accused but the documents which are unimpeachable in character and/or of sterling quality can be considered even at this stage, while the court is considering a proceeding under section 482 of the Cr.P.C. In the present case the statements of account supplied by the petitioner can very well be relied as a document of unimpeachable character.

18. Even if there is any dispute regarding non-payment or under payment of price of the flying ash by the petitioners and their company, that by itself does not amount to commission of an offence of cheating or criminal breach of trust. It is settled law that criminal proceedings are not a short cut of other remedies available in law. A commercial transaction took place herein between the petitioners and their company with accused no. 1/company, during which the said parties consensually agreed to supply the fly ash and to make payment thereof and it is not the case of either of the party that petitioners or their company in anyway deceit to make a payments to the supplier.

19. Here the main offences alleged by the complainant/opposite party is that the accused no. 1 in connivance with accused no.4 and its management (petitioners are the management of accused no.4) committed the offence of cheating and the case of the complainant is that the accused persons have cheated him and thereby dishonestly induced him to deliver property. To 'deceive' means to induce a person to believe something which is false and which the person practicing the deceit knows or believes it to be false and it must also be shown that there existed a fraudulent and dishonest intention at the time of commission of offence. There is no allegation in the instant case that the petitioners herein being the management of Calcom Cement (accused no.4) made any wilful misrepresentation. They have entered into a valid agreement and it has never been alleged that there was any fraud or dishonest inducement on the part of the petitioners herein by which the complainant parted with the property. Complainant also did not make out any case that the petitioners or their company obtained the article by any fraudulent inducement or by wilful mis representation. It is unfortunate that many a times complaints are filed with the oblique motive or for collateral purpose to harass, to wreck vengeance, to pressurize the accused persons or to bring them to their own terms or to enforce the obligations arising out of alleged breach of contract, touching commercial transactions instead approaching civil courts, with a view to realize money at the earliest.

20. There is other aspect of the matter also. The present complaint has been lodged one year after delivering the fly ash. In ***Lalita Kumari Vs. Government of U.P.*** reported in **(2014) 2 SCC 1** the Supreme court has laid down the law that in such cases where there is abnormal delay/latches in initiating criminal prosecution, for example over three months delay in reporting the matter without satisfactory explanation for such delay the preliminary inquiry may be conducted. It appears that in the present case no attempt was made to make preliminary inquiry to ascertain whether the accused no.4 (Calcom Cement) and its management namely the petitioners herein had at all played any role in committing the alleged offence. Even if complainant has any case that accused no.1 M/S Krishna Overseas intrude the complainant to represent it as consignor before the Railway authority on the plea that the same would help them to clear the goods immediately or when said quantity of fly ash reached to its destination, the accused no. 10 if cleared the same by giving alleged false affidavit and handed over the fly ash to accused no.4, M/S Calcom Cement Ltd. and thereafter even if there was any denial of payment, that does not constitute any offence either against Calcom Cement or against its management namely petitioners herein.

21. Having regard to the facts and circumstances of the case, it is difficult to discern an ultimate deception in the whole transaction by the accused no.4 or accused no. 5 to 7 and on the contrary it is palpably evident that the opposite party/complainant with an oblique motive have implicated the accused no. 4 to 7 and as such further continuance of the instance proceeding against the said accused persons would be a mere abuse of the process of the court.

22. In such view of the matter **CRR 3190 of 2015** is allowed.

23. The impugned proceeding being GR case No. 2097 of 2012 arising out of Girish Park Police Station case No. 198 dated 07.07.2012, presently pending before the learned Metropolitan Magistrate 8th Court Kolkata is hereby quashed. qua the petitioners namely **Binod Kumar Bawri, Ritesh Bawri and Binay Bawri @ Vinay Bawri.**

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.)