

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4912 of 2023

Gopal Krishna Dewonjee

VS.

The State of West Bengal & Anr.

For the Petitioner : Mr. Mohit Gupta,
Mrs. Sneha Dutta.

For the Opposite Party No.2 : Mr. Biswanath Banerjee.

For the State : Mr. Madhusudan Sur, APP
Mr. Avijit Ganguly,
Ms. Eshita Dutta.

Hearing Concluded on : 20.12.2024

Judgment on : 08.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceedings being Nischinda PS case no.90 of 2023 under Section 420 and 406 of IPC in GR case no.2470 of 2023 pending before the learned Judicial Magistrate, Howrah.
2. The case of the petitioner herein is that he is a 95 year old person and the de facto complainant herein has filed a case on the following allegations:-

- a. The de facto complainant had executed an agreement on 1st May, 2005 with the petitioner to purchase a land situated at Mouja Bally, JL no.14, RS dag no.4318 as measuring about 6 cottah 10 chittak under Sapuipara Basukathi Gram Panchayat.*
 - b. The purchase consideration agreed by and between the parties was Rs.50,000/- per cottah.*
 - c. The de facto complainant made payment of Rs.3,00,000/- to the petitioner.*
 - d. Verbal requests were made by the de facto complainant to the petitioner to execute and register a deed of conveyance in favour of the de facto complainant in respect of the aforesaid land.***
 - e. Finally on 24th March, 2022, the de facto complainant wrote to the petitioner requesting the petitioner to execute and register a deed of conveyance in favour of the de facto complainant in respect of the said land.*
 - f. The petitioner despite the said requests both made orally and in writing has failed to execute and register a deed in favour of the de facto complainant in respect of the said land and has thus cheated the de facto complainant.*
- 3.** The petitioner's case is that by an agreement dated 1st May, 2005 the petitioner agreed to sell the said land to the de facto

complainant subject to the de facto complainant **making payment of the consideration amount within three months. The de facto complainant failed to make payment of the same within the time specified** and as such, the time period to make payment of the agreed consideration was extended till 26th December, 2006.

4. The present case has been initiated in the year 2023, 17 years thereafter.
5. The Hon'ble Supreme Court in ***Lalit Chaturvedi Vs. State of U.P, Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of 2023)***:-

“5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.

6. In “Mohammed Ibrahim v. State of Bihar”, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied:—

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari

Lal Bhagwati v. CBI”, “*Indian Oil Corporation v. NEPC India Ltd.*”, “*Vir Prakash Sharma v. Anil Kumar Agarwal*” and “*All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain*”.

10. *The charge sheet also refers to Section 406 of the IPC, but without pointing out how the ingredients of said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The chargesheet does refer to Section 506 of the IPC relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us, that these allegations of threats etc. have been made only with an intent to activate police machinery for recovery of money.*

11. *It is for the respondent no. 2/complainant – Sanjay Garg to file a civil suit. Initiation of the criminal process for oblique purposes, is bad in law and amounts to abuse of process of law.”*

6. In *Naresh Kumar Vs The State Of Karnataka., Criminal Appeal No. of 2024, (Arising Out Of SLP (Crl.) No. 1570 of 2021), on 12th March, 2024*, the Supreme Court held as follow:-

“6. *In the case of *Paramjeet Batra v. State of Uttarakhand* (2013) 11 SCC 673, this 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 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.” (emphasis supplied) Relying upon the decision in Paramjeet Batra (supra), this Court in Randheer Singh v. State of U.P. (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90, relying upon Paramjeet Batra (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

7. *Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in Sarabjit Kaur v. State of Punjab and Anr (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent*

or dishonest intention at the time of making the promise.”

- 7. In the present case, the dispute relates to a contract and relief prima facie lies before a civil court by way of a suit for specific performance of contract.**
- 8. CRR 4912 of 2023 is thus allowed.**
- 9. The proceedings being Nischinda PS case no.90 of 2023 under Section 420 and 406 of IPC in GR case no.2470 of 2023 pending before the learned Judicial Magistrate, Howrah, is hereby quashed in respect of the petitioner namely Gopal Krishna Dewonjee.**
- 10. All connected applications, if any, stand disposed of.**
- 11. Interim order, if any, stands vacated.**
- 12. Copy of this judgment be sent to the learned Trial Court for necessary compliance.**
- 13. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.**

(Shampa Dutt (Paul), J.)