IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELATE SIDE

PRESENT:
THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.R. 292 of 2024

Ram Charan Bansal Construction Pvt. Ltd & Ors.

versus

The State of West Bengal & Anr.

For the Petitioners	:	Ms. Rima Sarkar, Ms. Sidhi Sethia, Mr. Suparna Paul
For the Private Respondent	:	Mr. Tapas Ch. Bhattacharya, Mr. Subhajyoti Ghosh.
For the State	:	Mr. Nilay Chakraborty, Ld. A.P.P. Mr. Sourav Ganguly.
Reserved On	**:**	**08.01.2025**
Judgement On	**:**	**08.01.2025**

Tirthankar Ghosh, J. :

The present revisional application has been preferred challenging the proceeding arising out of a complaint case being CR Case No. 333 of 2017 under Section 420 and 120B of the Indian Penal Code pending before the Learned Judicial Magistrate 3rd Court Siliguri.

The allegations made in the petition of complaint were to the effect that as follows:

> *"That the Complainant company represented by the authorize signatory namely Ramesh Maheshwari carries on its business of is a resident of Sri Ram Market, Sevoke Road, Siliguri – 734001.*
>
> *That in pursuance of accused person's order the complainant company supplied 11 nos of 630 mm PN 4 PE 80 HDPE Pipe (6 Mtr. Long) amounting to Rs. 4,75, 200.00 to the accused persons vide tax invoice no UPPLT/029/16-17 and Challan No. 029/16-17 dated 06.12.2016 upon receipt of Rs. 1,50,000/- as advance and the accused persons assured the complainant to pay the balance amount of Rs. 3,25,000/- (Approx) to and in favour of the complainant company upon receipt of goods by the accused persons.*
>
> *That considering the relationship between the complainant and the accused persons the complainant supplied the above materials as per the demand of the accused persons and the said materials duly received by the accused persons.*
>
> *That subsequently the accused persons intentionally avoided and neglected to pay the complainant company the said balance amount of Rs.3,25,000/- (Approx) despite several request and reminders vide letters dated 22.12.2016, 16.01.2017, 16.02.2017 & 06.04.2017 were made by the complainant company to the accused persons.*
>
> *It is not out of place to mention herein that against the above referred letters of the complainant company the accused persons denied to make payment to the complainant company on false,*

incorrect, vague and baseless allegation though it was admitted by the accused persons regarding receipt of the above materials by them.

That it is stated herein that inspite of correspondence the accused persons are ignoring the payment of dues to the complainant company, though the accused persons are willful and deliberate failure, refusal and neglect to make payment of the said amount of Rs. 3,25,000/- (Approx) to the complainant, the accused persons have dishonestly altered and destroyed the amount for their personal gain, that the said amount was a valuable security, which the accused persons has fraudulently, intentionally and dishonestly converted into a valuable security in the accused persons name.

That the accused persons said act of malicious, motivated, willful and fraudulent act/s clearly and manifestly proves the fact that the accused persons have fraudulent & dishonest intention of cheating.

That due to nonpayment of aforesaid outstanding sum of Rs. 3,25,000/- (Approx) to the complainant has been computing huge financial loss and mental agony.

That the complainant upon good faith and upon the accused persons request, representations, and assurances that the accused persons would pay to the complainant the balance amount of goods supplied to them as afore stated.

That despite the complainant regular follow-ups and inspite of the complainant's repeated requests, reminders, and demands and sufficient opportunities granted to the accused persons, the accused persons had willfully and deliberately failed, refused *and neglected to make payment of the outstanding dues of Rs. 3,25,000/- (Approx).*

That the accused persons have miserably failed neglected and refused to make payment of the said outstanding dues of the complainant amounting to Rs.3,25,000/- (Approx).

That the accused presons therefore committed the offence of criminal conspiracy and cheating with the ulterior motive of defrauding the complainant and causing wrongful loss to the complainant in every aspect.

That the accused persons have therefore cheated the complainant by fraudulently and dishonestly inducing the complainant to supply goods as above by the accused persons and intentionally induced the complainant to supply the said goods to the accused presons which the complainant would not have done if the complainant were not so deceived by the accused persons such inducement, utterings and assurances.

That the accused person, has, therefore, committed offence punishable under Section 120B & 420 of the 1.P C."

Ms. Rima Sarkar, learned advocate appearing for the petitioners submits that the present complaint, if it is accepted true on its face value, is a case for recovery of money and fails to make out any offence under Section 420 of the IPC. Learned advocate submits that the complainant made out a case for supply of 11 nos. of 630 mm PN 4 PE 80 HDPE Pipe (6 Mtr. Long) amounting to Rs. 4,75,200/- and was sent vide tax invoice no. UPPLT/029/16-17 and

Challan No. 029/16-17 dated 06.12.2026. The same was supplied, according to the complainant, pursuant to an advance received for Rs. 1,50,000/-.

The case of the complainant is that the outstanding balance amounting to the tune of Rs.3,25,000/- was never paid. To that effect, the petitioners sent reminders on different dates till April, 2017 but, the outstanding dues of the complainant were never paid. The emphasis was made on behalf of the complainant regarding the factum of outstanding dues to be recovered by way of initiating a criminal case invoking the provisions of Section 420 of the IPC.

According to the learned advocate, no offence has been made out in respect of the accusations and/or allegations made in the petition of complaint and the case is simply for recovery of the dues which is a civil dispute.

In order to fortify her arguments, learned advocate has relied upon the following judgments:

(i) Anil Mahajan –vs- Bhor Industries Ltd. & Anr. Reported in (2005) 10 SCC 228;

(ii) Deepak Gaba & Ors.-vs.- State of Uttar Pradesh & Anr., reported in (2023) 3 SCC 423 and

(iii) Thermax Limited & Ors.-vs.- K.M. Johny & Ors., reported in (2011) 13 SCC 412.

Mr. Bhattacharya, learned advocate appearing for the complainant/o.p., submits that the accused persons has entered into a conspiracy and by paying advance received the goods and, subsequently, did not remit the outstanding dues. The conduct of the accused/petitioners, on the face of it, reflects that they had the intention to deceive the complainant/company and, as such, by way of allurement received the goods by paying advance with an ulterior motive of neglecting the wrongful loss upon the complainant. Learned advocate has drawn the attention of the court to the documents relied upon in the writ petition and submitted that, earlier, the accused/petitioners approached the learned Additional District & Sessions Judge, 1st Court, Siliguri, wherein, in Criminal Revision No. 35(6)/2017 by a judgment and order dated 25th March, 2021 the prayers relating to issuance of process were set aside, as there was, non- compliance of Section 202 of the Cr.P.C.

Subsequently, the learned Magistrate called for a report from the police authorities, conducted an enquiry under Section 202 of the Code of Criminal Procedure Code and after further examination issued process. The petitioners thereafter again approached this Court by invoking its jurisdiction under Section 401 read with Section 482 of the Code of Criminal Procedure, inter alia, praying for quashing of the proceedings which should not be entertained at this stage as the complainant should be allowed to adduce his evidence before the learned Trial Court.

I have considered the submissions advanced by the learned advocate appearing for the petitioners as well as that of the complainant/opposite party and I find from the basic averments made in the complaint that the case was instituted for non-payment of a sum of Rs.3,25,000/-. Further there is a clear averment in the complaint itself that as the accused persons neglected and refused to make payments of the outstanding dues they have cheated the complainant. The averments in the complaint reflect that a sum of Rs.1,50,000/- as advance was received and the goods were supplied, however, the complainant is aggrieved because of non-payment of balance/outstanding dues of Rs.3,25,000/-. The question, therefore, arise is that whether the subsequent failure to keep a promise would attract the provisions of Section 420 of the Code of Criminal Procedure.

In V.Y. Jose –Vs. – State of Gujarat, (2009) 3 SCC 78 which has been held as follows:

> ***"14.*** *An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:*
>
> *(i) deception of a person either by making a false or misleading representation or by other action or omission;*
>
> *(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.*
>
> *For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation.*

Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.

21. *There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.*

24. *It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.*"

In All Cargo Movers India (P) Ltd. –Vs. – Dhanesh Badarmal Jain, (2007) 14 SCC 776 which has been held in paragraph 16 as follows:

"16. *[Ed. : Para 16 corrected vide Official Corrigendum No. F.3/Ed.B.J./86/2008 dated 18-10-2008.] We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of Respondent 1-plaintiff in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on*

> *the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice.*"

Having considered the principles set out by the Hon'ble Apex Court in the background of the facts of the present case, I am of the view that as distinction exists between mere breach of contract and the offence of cheating as also the case has been initiated merely for recovery of outstanding dues, the present complaint considering the allegations makes out a Civil dispute which has been giving the cloak of a criminal proceedings and under settled proposition of law cannot be allowed to continue as the same will result in unnecessary harassment to the present petitioners.

Accordingly, the complaint case being CR Case No. 333 of 2017 is vexatious in nature and is thereby quashed.

Thus, CRR 292 of 2024 is allowed.

Pending connected application, if any, is consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)