

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRR 389 of 2024

Ganesh Kamti
Vs.
The State of West Bengal & Anr.

Mr. Subham Ghosh
Mr. Mayank Roy ...for the petitioner

Mr. Subhankar Dutta ...for the defacto-complainant

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Abhijit Sarkar ...for the State

This is an application wherein the petitioner has challenged the impugned proceeding being Siliguri Police Station case no. 888 of 2024 dated 28.9.2024 corresponding to G.R. case no. 3367 of 2024, presently pending before the learned Additional Chief Judicial Magistrate, Siliguri.

The fact narrated in the FIR is that the petitioner herein placed order for catering regarding food items to the opposite party to be arranged and provided on the date of reception and opposite party gave his rate charges at Rs. 85,000/-. The petitioner herein did not agree to pay the said amount and he himself quoted the amount as Rs. 65,000/- which the opposite party agreed.

In terms of said agreed amount, a rate chart was prepared and signed by both the parties on 7.3.2024 and after 2/3 days

out of the said amount, Rs. 30,000/- was paid by G-pay and the balance amount of Rs. 35,000/- were agreed to be paid by him after few days of the reception party.

Believing upon such representation, the service was rendered. However, the petitioner herein allegedly did not pay the balance amount of Rs. 35,000/-. It is also alleged in the FIR that the complainant made several prayers before the Bar Association since the petitioner herein is an advocate but the Bar Association also refused to take any step against the petitioner. Accordingly, it is alleged that the petitioner herein by way of dishonest and fraudulent inducement has misappropriated a sum of Rs. 35,000/-, which the complainant/opposite party would not have invested, had it been known to him that he would be deceived by dishonest promise and inducement.

Learned counsel for the petitioner being aggrieved by the proceeding submits that the dispute is purely civil in nature and if the opposite party is at all being aggrieved due to non-payment of the said amount, he ought to have filed a civil case for realization of the money but by no stretch of imagination, the allegation of cheating or criminal breach of trust can be leveled against the present petitioner. He further submits that the allegation of committing offence of criminal breach of trust and cheating as envisaged under Sections 406 and 420 of the Indian Penal Code, cannot run concurrently in respect of the self-same transaction. He further submits that since there was no initial deception as part payment has been made as appearing from the contents of

the FIR, the proceeding is liable to be quashed and in this context, he relied upon a judgment of the Apex court in the case of **Sharif Ahmed Vs. State of Uttar Pradesh reported in 2024 SCC Online SC 726.**

Petitioner further submits that the present case is a counter-blast of a complaint, initiated by him against the defacto-complainant herein being Siliguri Police Station case no. 699 of 2024 dated 27.7.2024.

Learned counsel for the private opposite party/defacto-complainant submits that it was all along in the mind of the petitioner to misappropriate the said amount and for which, the criminal proceeding initiated herein, is not liable to be quashed at its threshold. He further submits that the truth will come out only after completion of investigation and for which investigation should not be nipped in the bud.

Learned counsel for the State placed the case diary and leaves the matter to the discretion of the court.

On perusal of the case diary, I find that during investigation, police has recorded the statements of one Neha Singh, wife of opposite party no. 2 and the other namely, Ashok Sah, and stated that out of total amount of Rs. 65,000/-, the petitioner has only paid Rs. 30,000/- but in spite of repeated request, he refused to pay Rs. 35,000/-.

Having heard learned counsel appearing on behalf of the parties and on perusal of materials on record, it appears that it is a clear case of breach of payment of rate charges as allegedly

agreed by and between the parties on 7.3.2024. It is trite law that a mere breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not enough to initiate criminal proceeding of cheating or criminal breach of trust. From the facts available on record, it appears that out of total agreed amount, a substantial payment has been made and since alleged due amount has not been paid, the entire idea of initiating present criminal proceeding has been cropped up and thereby petitioner made an attempt to convert a civil dispute into criminal in order to put pressure upon petitioner herein for payment of alleged due amount of Rs. 35,000/-. The petitioner is also booked under Section 406 of the IPC without pointing out how the ingredients of said section are satisfied in the present context.

In Indian Oil Corporation Vs. NEPC (India) Ltd., (2006) 6 SCC 736, Apex Court observed that any effort to settle civil dispute and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. The court also noticed a growing trend in business circles to convert purely civil dispute into criminal cases.

In the present context, complainant's attempt to recover Rs. 35,000/- from petitioner/accused by filing this criminal complaint also appears to be mala fide and therefore unsustainable.

Supreme Court has set out the categories of cases in which inherent power under Section 482 of Code of Criminal Procedure can be exercised in paragraph 102 in the case of **State of Haryana Vs. Bhajanlal, 1992 Supp (1) SCC 335** and I am of considered view that present case falls under the 1st, 3rd and 7th category set out in said paragraph 102 and for that the proceeding is liable to be quashed.

In such view of the matter, CRR 389 of 2024 is accordingly allowed.

The impugned proceeding being Siliguri Police Station case no. 888 of 2024 dated 28.9.2024 corresponding to G.R. case no. 3367 of 2024 stands quashed.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)