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CRR 2058 of 2025

Shri Bharat Lakhotia & Anr.
Vs.
The State of West Bengal & Anr.

Mr. Sabyasachi Banerjee, Sr. Adv.
Mr. Pratim Priya Dasgupta
Mr. Amit Dey ...for the petitioners

Mr. Debasish Roy, Ld. PP
Mr. Kunal Ganguly ...for the State

The petitioners herein have assailed the order dated 10th April, 2025 by which the court below has rejected the petitioners' prayer for discharge filed under Section 239 of the Code of Criminal Procedure, on the ground that the court is not required to go deep into the probative value of the materials on record and he is not required to evaluate sufficiency of evidence to convict the accused nor he is supposed to speculate at this stage about truthfulness or falsity of the allegations and contradictions and/or inconsistencies in the statement of witnesses.

Being aggrieved by the impugned order, learned counsel for the petitioners submits that even if the prosecution story is accepted to be gospel truth, then also placements of facts singularly lacks either of the ingredients of the alleged offence. He further submits that on perusal of the events and documents as annexed with the application, it is evident that part-payment was being received, which the petitioners deliberately suppressed. Furthermore, after lodging the FIR, an amount of Rs. 7,20,328/- has already been paid. He further submits that initially an amount of Rs. 2,79,672/- was paid and therefore, the entire loan amount has already been repaid. The documents annexed with the complaints also suggest that the dispute resolves around the claim of dues/money only out of a business transaction. By no stretch of imagination, it can be said that the petitioners have any mala fide intention at the inception. So far as the allegations of criminal intimidation is concerned, it is evident that no role has been attributed against the petitioners except a vague and omnibus allegation of threat. It does not transpire as to how and in what manner, the petitioner no. 1 had induced and cheated the opposite party no. 2, whereas the petitioner no. 1 time and again acknowledged the loan amount and assured to pay the outstanding dues. Therefore, the ingredients of Section 406/420/120B as well as Section 506 of the IPC is conspicuously absent in the present case. He prays for setting aside the impugned order and to discharge both the petitioners from the impugned proceeding.

Learned counsel for the State places the case diary and leaves the prayer to the discretion of the court.

I have considered the submissions made on behalf of both the parties and I have also gone through the materials collected during investigation. Under Section 239 of Cr.P.C., the Magistrate is empowered to discharge accused if after

i) considering the police report and documents mentioned in Section 173

ii) examining the accused if necessary

iii) hearing the arguments of both sides

He thinks the charge against him to be “groundless” i.e. either there is no legal evidence or that the facts do not make out any offence at all. Reading Section 239 along with Section 240, it is clear that if there is no ground for presuming that the accused has committed an offence, the charge must be considered to be “groundless”.

In view of decision of the Apex Court in State of Karnataka Vs. Muniswami & others reported in (1977) 2 SC 699, it is wrong to say that at the stage of framing charges, the court cannot apply it’s judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. The order framing a charge affects person’s liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial.

Now in view of aforesaid settled position of law, if I judge the present case, I find that allegation in the FIR may be summarized as follows:

i) petitioner no. 2 induced complainant for providing him Rs. 10,00,000/- due to his urgent requirement and he assured to return the entire amount with interest.

ii) Thereafter petitioner no. 2 gave complainant two cheques but requested not to deposit the cheques for encashment as he was not in a position to honour the cheque but he assured to make early payment.

iii) Complainant approached number of times for repayment, but the petitioners threatened him and told him to forget the amount and if complainant again ask for money, they will teach him a lesson.

iv) Complainant is a senior citizen and dependent upon the said amount and that the petitioners are notorious for cheating people.

During investigation police has interrogated two persons under Section 161 Cr. P.C., among them Prodip Bose stated that in the year 2019 petitioner no. 2 took loan of Rs. 10,00,000/- and he returned a portion of amount to the tune of Rs. 2,79,672/- in the form of interest but he did not return the remaining amount to the tune of Rs. 7,20,328/-. The other witness namely Ganesh Mall Channai has not stated anything about commission of any criminal offence by the petitioners. I do not find any other incriminating materials in the case diary against the petitioners. Charge-sheet also discloses that out of invested amount of Rs. 10,00,000/-, the accused persons have deposited Rs. 2,79,672/- as interest to the complainant's bank account. Police report dated 18.3.2026 states that complainant admitted that he received a cheque of Rs. 7,20,328/-, which they have encashed in their bank account but they are yet to receive Rs. 12,15,859/- more from the petitioners.

Needless to say that in order to establish an offence of cheating under Section 420 IPC, it is required to be shown 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 party the accused to keep his promise. In the absence of an culpable intention at the time of making initial promises being absent no offence under Section 420 of IPC can be said to have been made out.

In the instant case from the charge-sheet and also from the statement of witness, at least it has been established that petitioners have paid Rs. 2,79,672/- to the complainant out of total outstanding amount, which suggests absence of an culpable intention at the time of making initial promise. As per FIR initially they have also issued cheques. Therefore, Section 420 of IPC has got no application in the present case in the absence of any mens rea about deception at the inception.

Here complainant had given loan to petitioner no. 2 with the assurance that he will refund the amount with interest but he failed to keep his promise and allegedly did not pay entire amount. In such circumstances, no case under Section 405 of IPC has been made out as money thus paid by way of loan would not amount to "entrustment" for the purpose of the Section.

It is also well settled that proceeding under Section 420 and 406 of IPC cannot co-exist on the self-same set of allegation as ingredients of two offences are contradictory to each other.

So far as allegation of criminal intimidation under Section 506 is concerned, I have already indicated above that in the FIR complainant has only stated that petitioners have threatened him and in case of further demand of money, they will teach him a lesson. During investigation no iota of evidence in support of criminal intimidation was found. However, it is settled law that before an offence under Section 506 can be made out, it must be established that the accused had an intention to cause as alarm to the complainant. Mere threats given by the accused not with an intention to cause alarm to the complainant, would not constitute an offence of criminal intimidation.

Since the materials fails to establish the ingredients of substantive offences, there can hardly be any chance of conviction of the petitioners for alleged conspiracy under Section 120B of IPC, as there exists no material of a "meeting of mind".

Therefore, the order impugned suffers from perversity, as Magistrate at the time of passing impugned order has acted merely as mouthpiece of the prosecution by not considering the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court. Even without making roving enquiry, he ought to have identified the basic infirmities appearing in the case before hastily turned down the prayer for discharge.

In view of above, the impugned order dated 10th April, 2025 passed in G.R.(S) 719 of 2022 is hereby set aside and the petitioners are hereby discharged.

The instant application being CRR 2058 of 2025 thus stands allowed.

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

(Dr. Ajoy Kumar Mukherjee, J.)