

(2022) 09 CAL CK 0074

In the Calcutta High Court

Case No : Criminal Revision No. 1960 Of 2021, CRAN 1 Of 2021

Anant Tiwari & Anr.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 177, 178, 181(4), 482

Indian Penal Code, 1860 — Section 34, 120B, 323, 406, 409, 419, 420, 504, 506

Citation : (2022) 09 CAL CK 0074

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Pratip Mukherjee, Sudip Basu, R. Agarwal, Amitabha Ghosh, Avishek Sinha

Final Decision : Dismissed

Judgement

Bibek Chaudhuri, J

1. The petitioners have invoked the revisional jurisdiction of this Court under its inherent power under Section 482 of the Code of Criminal Procedure praying for quashing of the proceeding being Dum Dum P.S Case No.367 of 2021 dated 23rd March, 2021 under Sections 419/420/406/323/506/504 of the IPC arising out of M.P Case No.487 of 2021 pending before the learned ACJM at Barrackpore.

2. The opposite party No.2 filed an application under Section 156(3) of the Cr.P.C against the petitioners stating, inter alia, that the petitioners issued a work order dated 10th March, 2017 in favour of the opposite party No.2 for the work of "Earth Work in Formation in Cutting Filling Including Compaction, Blanketing, Turfing at Purani Basti Under Pole No.912/25 to 912/01 to Murna Bridge & Kalyanpur Under Bridge to Koilari Railway Phatak" in connection with construction of Anuppur-Katni 3rd Line of Bilaspur Division of South East Central Railways. After the said work order being issued in provided work in favour of the opposite party No.2/complainant, the complainant noticed that he required some machinery for the work including a machine, named, Pockland. When the

complainant was in search of the said Pockland machine, the accused persons proposed the complainant to provide them a sum of Rs.7,00,000/- for procuring the said machine on condition that they would permit the complainant to make use of the said machine at nominal amount of rent or premium. The complainant on bona fide belief took loan and paid a sum of Rs.7,00,000/- by issuing a cheque in the name of M/s Maharishi Anant Tiwari, a proprietorship business concern of the accused persons. Thereafter the complainant repeatedly requested the accused persons to hand over the said machine but accused persons did not hand over the said machine to him. On the contrary, the complainant notice that some other persons were working at the site mentioned in the work order which was entrusted to him. The complainant returned Kolkata from Madhya Pradesh for another job. He sent number of letters to the accused persons requiring them to repay the said loan amount but they refused and neglected to make repayment of the same and thereby misappropriated entire money paid by him to them.

On 27th February, 2021 the accused persons along with some other unknown people came to the complainant's house, assaulted him mercilessly and threatened him with dire consequences if he would approach the accused persons further in any way.

3. The learned Magistrate by order dated 17th March, 2021 transmitted the aforesaid application to the Inspector In-Charge, Dum Dum Police Station directing him to treat the said application as a written complaint and register a specific case against the accused persons.

4. Accordingly, Dum Dum P.S Case No.367 of 2021 under Section 409/420/406/323/506/504/120B of the IPC was registered against the accused persons. The accused persons/petitioners have prayed for quashment of FIR in connection with Dum Dum Police Station Case No.367 of 2021 dated 23rd March, 2021.

5. Mr. Pratip Mukherjee, learned Advocate for the petitioners submits that written complaint submitted by the opposite party No.2 is bad on the ground of suppression of material fact. According to the complainant/opposite party No.2, the petitioners have misappropriated a sum of Rs.7,00,000/- which the complainant paid to them as loan.

However, the petitioner suppressed that on 4th January, 2018, the petitioner No.2 transferred a sum of Rs.2,00,000/- in favour of the opposite party No.2 by RTGS Bank Transfer.

6. It is further submitted by the learned Advocate for the petitioners that the defacto complainant and the petitioners have ongoing business transaction since long. As a result of such business transaction the petitioners offered him a job of earth cutting and filling in Madhya Pradesh. The complainant transferred some amount of money in favour of the petitioners on the basis of work order dated 28th February, 2017. Subsequently, the petitioners also made part payment of

money in favour of the complainant. Therefore, the dispute between the parties arose as a result of alleged breach of contract. When in terms of the contract one party pays money to the other and in return part payment is made by the second party, the dispute relates to breach of contract and no criminal liability under Section 419/420 of the IPC attracts.

7. It is further submitted by the learned Advocate for the petitioners that the complainant has manufactured and cooked up an incident dated 27th February, 2021 in order to create jurisdiction of the court of the learned Additional Chief Judicial Magistrate at Barrackpore alleging, inter alia, that the accused persons came to the house of complainant all the way from Madhya Pradesh with some other persons and allegedly assaulted the complainant and threatened him with dire consequence.

8. Referring to Section 181(4) of the Code of Criminal Procedure, it is submitted by the learned Advocate for the petitioners that any offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused persons. It is pointed out by the learned Advocate for the petitioners that the complainant allegedly gave loan of Rs.7,00,000/- to the petitioners in Madhya Pradesh. They allegedly misappropriated the said amount in Madhya Pradesh. The complainant did not state that he received or retained any money towards part payment within the jurisdiction of the Court of the learned Additional Chief Judicial Magistrate at Barrackpore. Therefore, the court of the learned Magistrate at Barrackpore has no jurisdiction to try the offence under Section 406/419/420 of the IPC against the petitioners.

9. It is further submitted by the learned Advocate for the petitioners that in view of the petitioners' making part payment of the outstanding dues to the opposite party No.2 and if at all the allegations made by the opposite party No.2 is true, the efficacious relief lies in filing a suit for recovery of outstanding dues. The petitioners have no criminal liability in the instant case and continuation of the criminal proceeding is abuse of the process of the court and should be quashed. In support of his contention the learned Advocate for the petitioners refers to a decision of the Hon'ble Supreme Court in Anil Mahajan vs. Bhor Industries Ltd. & Anr. reported in (2005) 10 SCC 228. The Hon'ble Supreme Court in the case of Anil Mahajan lays down a fine line of distinction between cheating and breach of contract. It is observed by the Hon'ble Supreme Court that mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent,

dishonest intention is shown at the beginning of the transaction. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence.

10. Learned Advocate for the opposite party No.2 on the other hand, submits that the factual aspect of the case can only be decided in course of trial. The opposite party No.2 had made out a specific case that the accused persons assaulted him on 27th February, 2021 threatened him with dire consequence if he would ask for repayment of money from the petitioners and the incident dated 27th February, 2021 took place within the jurisdiction of the court of the learned Additional Chief Judicial Magistrate at Barrackpore. Therefore, the petitioners cannot claim quashing of the proceeding at the stage of investigation.

11. Learned Advocate for the opposite party No.2 further submits that in view of the provision laid down in Section 178 of the Code of Criminal Procedure the learned ACJM, Barrackpore has ample jurisdiction to try the offence allegedly committed by the petitioners.

12. Having heard the learned Advocates for the petitioners and the private opposite party and learned P.P-in-Charge, it is necessary at the outset to discuss as to whether the learned Additional Chief Judicial Magistrate, Barrackpore has the jurisdiction to try Dum Dum FIR Case No.367/2021. Section 177 of the Cr.P.C states that every offence was ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. It is contended by the petitioners that the petitioner issued a work order of cutting and filling of earth in Madhya Pradesh. According to the opposite party No.2/defacto complainant the petitioners committed cheating, dishonestly and fraudulently inducing the defacto complainant to part with a sum of Rs.1,00,000/- in favour of the petitioners. The alleged offence of cheating and misappropriation was committed in Madhya Pradesh. The opposite party No.2 manufactured a story of criminal trespass and causing hurt to the defacto complainant by the petitioners at his Kolkata residence only to create jurisdiction of the learned Additional Chief Judicial Magistrate at Barrackpore.

13. I have already stated the provision contained in sub Section "4" of Section 181 of the Cr.P.C which states that any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject matter of offence was received or retained, or was required to be returned or accounted for, by the accused person.

14. If the case made out by the defacto complainant to the effect that the petitioners were required to return the defacto complainant's money in the bank account maintained in Kolkata within the jurisdiction of the learned Additional Chief Judicial Magistrate at Barrackpore, this Court will have no alternative but to hold that the learned Additional Chief Judicial Magistrate, Barrackpore has the jurisdiction to try the offence. This Court in Sahadeb Prasad Agarwal & Anr. Vs

The State of West Bengal & Anr. (CRR 355 of 2016) held that even if the defacto complainant/opposite party No.2 has civil remedy, a criminal case cannot be quashed only on this ground, non performance of an obligation arising out of a criminal or contract may have civil remedy and at the same time specific acts and conducts between the parties under agreement may constitute ingredients of offence under Sections 420 and 406 of the IPC. As a matter of fact, both criminal law and civil law can be perused in diverse situation. They are not mutually exclusive but clearly co-extensive and essentially differ in their contents and consequences. The decision of the Hon'ble Supreme Court in M/s Indian Oil Corporation Vs M/s NEPC India Limited & Ors. reported in AIR 2006 SC 2780 may be relied on in this regard wherein it was held that where the civil remedy is availed on any dispute arising from a breach of contract, remedy under the criminal law is not barred if the allegation disclosed a criminal offence.

15. In the instant case the petitioners issued work order in favour of the complainant for getting and filling earth in connection with consideration of Anupur-Katni 3rd Line of Bilaspur Division of South East Central Railway. It is not denied that the petitioners took a sum of Rs.7,00,000/- from the opposite party No.2 to purchase Pockland Machine. Subsequently the opposite party No.2 found that some other person was interested with the same work by the petitioners and the said 3rd party was carrying out the said job under the work order in question. This prima facie shows culpable intention on the part of the petitioners to deceive the opposite party No.2 dishonestly and fraudulently inducing him to invest a sum of Rs.7,00,000/- to purchase Pockland Machine but carry out the said job. The said amount was handed over to the petitioners to purchase Pockland Machine. However, the petitioners did not repay the entire amount to the defacto complainant.

16. The question as to whether the incident dated 27th February, 2021 took place or not is a disputed question of fact to be decided finally in the trial.

17. At this stage it is not possible for this Court to hold that the opposite party No.2 had manufactured the story in connection with the incident dated 27th February, 2021.

18. For the reasons stated above I find prima facie ingredients of offence under Section 420/406/323/34 of the IPC against the petitioners from the petition of complaint, and material in case diary.

19. In view of the above discussion, the instant revision is liable to be dismissed.

20. Accordingly, the instant revision is dismissed on contest.