(2007) 09 CAL CK 0087

In the Calcutta High Court

Case No : C.R.R. No. 1580 of 2007 and CRAN No. 1027 of 2007

Bata India Ltd. and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 120B, 320, 415, 420

Citation : (2008) CriLJ 164

Hon'ble Judges : Partha Sakha Datta, J

Bench : Single Bench

Advocate : R.K. Anand, Milon Mukherjee, Ajoy Saroya, J. Bagchi, Prasanta Naskar and Sudarsan Roy, for the Appellant;Bhaskar Sen, Sudipto Moitra and Sukanta Chakraborty for Respondent No. 2 and Bikash Ranjan Bhattacharyya, Probal Kr. Mukherjee and Rajat Dutta, for the Respondent

Judgement

Partha Sakha Datta, J.—By this application dated 25-4-2007 u/s 482 of the Cr.P.C. prayer is made for quashing of a proceeding being New Market Police Station Case No. 40 dated 31-3-2007 u/s 120-B/ 320 of the IPC corresponding to G.R. Case No. 602 of 2007 u/s 120-B/420 of the IPC.

2. One Sambhu Maiti who is the O.P. No. 2 herein lodged a petition with the learned C.M.M. Calcutta against the present petitioners alleging the following facts:

O.P. No. 2 carries on business of contract job of carpentry and the job includes interior and exterior decoration and furnishing under different reputed Interior and Exterior Decoration Company and the business is mainly connected with the labour contract. He has been associated with O.P. No. 3, proprietor of M/s. R.D.G. Interior Decoration Exterior Architecture since 1999. The said O.P. No. 3 Mr. Sagar Roy undertook a job of interior decoration and furnishing at the Head Office of Bata India Ltd. at 6A S. N. Banerjee Road, Calcutta-700 013 and the O.P. No. 2 was entrusted by the O.P. No. 3 for carpentry job of the said project on contract basis and pursuant to the same he undertook and completed the said job by deploying his staff and received the payments in time. During the second week of February 2004 the said Mr. Sagar Roy called on the O.P. No. 2 in the registered office of the Bata India Ltd. at Calcutta and asked him to do some interior and exterior decoration job in the Corporation Office of the Bata India Ltd. at Gurgaon in the State of Haryana. Mr. Sagar Roy along with the officials of the Bata India Ltd. who are the present petitioners herein including their architect i.e. Mr. Monohar Dey explained to the O.P. No. 2 about the nature of the job of interior and exterior decoration to be undertaken in the Bata India Ltd.''s office at Gurgaon and the drawings of the carpentry job was shown to him. The project required deployment of 50/60 specialized carpenters and the time required for successful completion of the project was estimated to be 2/3 months. The O.P. No. 2 told Mr. Sagar Roy and the petitioners that he would be able to do the job with his team provided residential accommodation was arranged for him and his team at Gurgaon and day-to-day payments were made in addition to payment of outstation work charges. After consultation with the petitioners Mr. Sagar Roy requested the O.P. No. 2 to undertake the job on short term credit basis and assured of payment whenever the said Mr. Sagar Roy would receive payment from Bata India Ltd. and such assurances given by Mr. Sagar Roy were duly affirmed by the present petitioners who are accused No. 6 as per the petition. Work started at Gurgaon from 12-2-2004 on the basis of the drawings supplied by the architect of Bata India Ltd. and with the material supplied by the said Mr. Sagar Roy and the sum of Rs. 1 lac was paid to O.P. No. 2 by the said Mr. Sagar Roy on 23-2-2004 and O.P. No. 2 was requested by the said Mr. Sagar Roy to continue with the work without any break and thus the work was undertaken. By the end ofthe February 2004 the amount of Rs. 1 lac that was paid earlier was exhausted for payment to the labourers of the O.P. No. 2 and the said O.P. No. 2 requested Mr. Sagar Roy for further payment. Mr. Sagar Roy requested the O.P. No. 2 to continue the work till the middle of March 2004 with assurance of payment by the time. But the labourers of O.P. No. 2 along with his team returned to Kolkata on 1-3-2004 and by then more than Rs. 1 lac was found due with Mr. Sagar Roy. On 8-3-2004 Mr. Sagar Roy called the O.P. No. 2 at the office of the Bata India Ltd. at Kolkata and again in the presence of the officials of the Bata India Ltd. be requested the O.P. No. 2 to continue and complete the job at Gurgaon on short term credit basis and issued a letter dated 8-3-2004 to the O.P. No. 2 stating the work to be done at the said Gurgaon Office of Bata India Ltd. with assurance of making payment in a shortwhile as and when he would receive payment from the Bata India Ltd. The said Mr. Sagar Roy in presence of the senior officials of Bata India Ltd. who are the petitioners herein told the O.P. No. 2 that on earlier occasions he couldn''t make payment as the petitioners herein failed to make payment although the promise to make payment to Mr. Sagar Roy for the work done by the O.P. No. 2 at Gurgaon was made but the petitioners failed to keep up the promise. Mr. Sagar Roy further stated in the presence of the officials of Bata India Ltd. that this time there would be no difficulty in making payments as the senior officials of Bata India Ltd. had specifically assured that they would ensure payment to the O.P. No. 2 and his team in respect of the work to be done at Gurgaon. The officials of the Bata India Ltd. further confirmed and ratified the statements of Mr. Sagar Roy and requested the O.P. No. 2 to agree to complete the job at Gurgaon with an assurance of making of proper payments. In spite of such propsal the O.P. No. 2 was not convinced with the assurance made by the officials of the Bata India Ltd. and complete the carpetry job in the Corporate Office of the company at Gurgaon and Mr. P. K. Nag, the petitioner No. 2 at the request of the other officials of Bata India Ltd. agreed to give the O.P. No. 2 a written assurance regarding payment and to that effect Mr. S. J. Davis the petitioner No. 2 as Managing Director of the company issued a letter dated 8-3-2004 to the O.P. No. 2 and requested him to continue with the work with assurance of ensuring payment to the said Mr. Sagar Roy so that Mr. Sagar Roy might be able to disburse payments to the O.P. No. 2. Being induced by such representations of the high officials of Bata India Ltd. the O.P. No. 2 along with his team again proceeded to Gurgaon and resumed the job. On 15-3-2004 the said Mr. Sagar Roy made further payment of Rs. 1,50,000/- only. However, the O.P. No. 2 continued the work of the said project at Gurgaon without any further payment till the end of May 2004 when the entire work was satisfactorily completed under the supervision of various officials of Bata India Ltd., Mr. Sagar Roy (O.P. No. 3) and the concerned architect. As further payment was not forthcoming notwithstanding the representations and assurance of the officials of Bata India Ltd. and Mr. Sagar Roy being the team members of the O.P. No. 2 were not willing to continue the project work but still then the O.P. No. 2 was repeatedly assured by the officials of the Bata India Ltd. to continue with the work and not to worry about payment as payment would be made in a short while and on such representation and assurances the O.P. No. 2 completed the work. After completion of the job of carpentry Mr. Sagar Roy issued a completion certificate confirming the satisfactory nature of the job done by the O.P. No. 2. Neither during the work nor after completion of the job either Mr. Sagar Roy or the present petitioners who are the high officials of Bata India Ltd. raised any dispute with regard to the workmanship of the O.P. No. 2 and his team and it was only after completion of the job that the O.P. No. 2 raised a bill for Rs. 12,57,435/- and handed over the same to Mr. Sagar Roy and the sum excluded Rs. 2,50,000/- which was paid earlier in two instalments. But payments were not made to the O.P. No. 2 despite repeated assurances and he was requested to wait for sometime more. Since then the O.P. No. 2 has been continuously requesting Mr. Sagar Roy to make payment but on all the occasions Mr. Roy refused to make payment on the plea that he had not received payments from Bata India Ltd. and has already approached the legal forum for realization of the payments against Bata India Ltd. and on receipt of payment from Bata India Ltd. he would pay back to the O.P. No. 2. On account of the project the O.P. No, 2 had to make payments to his labourers upon taking loan from his friends and relatives and at the time when the petition was filed the O.P. No. 2 was in deep financial trouble. It is alleged in the petition that the O.P. No. 2 now realized that the said Mr. Sagar Roy along with the officials of the Bata India Ltd. intentionally deceived the O.P. No. 2 and dishonestly induced him to do the job in respect of the said project at Gurgaon on the assurance of making payments for the job done by the O.P. No. 2 and his men and agent but now it transpired that there had been no intention to make payment and fraudulently induced the O.P. No. 2 to complete the job which the O.P. No. 2 would not have undertaken and continued with and completed the job had the O.P. No. 2 would be realised that he so deceived by such false and frivolous representation of the accused persons ad thus the accused persons including the present petitioner in collusion with each other have cheated the O.P. No. 2 to the tune of Rs. 12,57,435/-. Finally on 29-9-2006 the O.P. No. 2 met with the said Mr. Sagar Roy and requested him to release payments of Rs. 12,57,435/- for the work done by the O.P. No. 2 and his men but Mr. Sagar Roy denied payments till he would receive his payment from the Bata India Ltd. The O.P. No. 2 then visited the office of the Bata India Ltd. at 6A S.N. Banerjee Road, Calcutta 700 013 and requested the officials of the Bata India Ltd. for release of the payments since at the very inception and during the work of the project the high officials of Bata India Ltd. who are the petitioners herein had assured the O.P. No. 2 of making payment after completion of the job, but instead of making payment to him he was harassed and humiliated. It has been alleged that the works were undertaken by the O.P. No. 2 at his cost and expenses on the basis of good relation with Mr. Sagar Roy and written assurance of the high officials of Bata India Ltd. It has been contended in the revisional application that there is no just cause or reason to withhold payment of Rs. 12,57.435/-. The O.P. No. 2 upon coming to know of the evil designs of the officials of the Bata India Ltd. and Mr. Sagar Roy to commit cheating and perpetrate fraud by inducing the O.P. No. 2 to undertake the jobs with false assurance of payment submitted a representation dated 28-9-2006 to the Deputy Commissioner of Police. Detective Deparment, Lalbazar, Calcutta praying for looking into the matter by taking appropriate steps against the culprits. One of the said representations dated 25-9-2006 was submitted by the O.P. No. 2, to the Deputy Commissioner of Police, Detective Department, Lalbazar. Thus it is alleged that the petitioners committed the offence of cheating and criminal conspiracy by not making payment in terms of the agreement.

3. This petition was sent by the learned C.M.M. to New Market Police Station for investigation and during the course of investigation this revisional application has been filed on the ground that the petition of complaint/FIR did not disclose any cognizable offence against the officials of the Bata India Ltd.

4. It has been contended in the revisional application that the petitioner No. 1, i.e. Bata India Ltd. had no privity of contract with the O.P. No. 2 the complainant herein who claims to be an agent and/or contractor of the said architect R.D.G. i.e. O.P. No. 3. In connection with the agreement with the O.P. No. 3 Mr. Sagar Roy the company issued work orders from time to time in favour of the O.P. No. 3 who executed the works and in course of execution of such work the company made diverse payments to the O.P. No. 2 from time to time in advance of an amount of Rs. 2.9 crores. In course of such work the company alleged that there

were certain issues in relation to the quality, specifications and deficiencies in the works undertaken by the O.P. No. 3, the proprietor of M/s. R.D.G. Interior Decoration Exterior Architecture who did not admit the allegations to be true and maintained that it had not committed any breach of covenants and that there was no deficiency in service or deficiency in quality and specifications of work undertaken as alleged or at all. The O.P. No. 3 instituted a criminal proceeding on the issue of alleged outstanding dues payable by the company and the New Market Police Station Case No. 278 dated 20-10-2004 was institutied and was pending before the Court of learned C.M.M. Calcutta and another case being New Market Police Station Case 280 dated 29-10-2004 u/s 420/120B of the IPC was also filed and later came to be pending before the learned C.M.M. Calcutta. The said O.P. No. 3 instituted winding up proceedings against the Bata India Ltd. before this Hon''ble Court being C.P. No. 522 of 2004 and 523 of 2004. The Bata India Ltd. lodged a criminal case against Mr. Sagar Roy, the proprietor of the said Architect R.D.G. and others before the station house officers at Gurgaon and before learned C.M.M. at Gurgaon. During the pendency of the aforesaid litigation the petitioner No. 1 i.e. Bata India Ltd. Company and the said Architect R.D.G. arrived at a consensus to resolve the pending dispute on certain conditions i.e. Bata India Ltd. would pay Rs. 1,60,00,000/- less statutory T.D.S. as full and final settlement for the 24 Bata Brand Shops and therefore Bata India Ltd. would immediately upon the execution of the agreement hand over to Mr. Sekhar Basu, learned Advocate of the High Court at Calcutta a banker''s draft payable at Calcutta bearing No. 671854 dated 17-2-2005 drawn on the S.B.I. C.A.G. bank for a sum of Rs. 1.57,26,722/- in favour of M/s. R.D.G. Interior Decoration Exterior Architecture Pvt. Ltd. being the balance of the principal amount payable on account of the works undertaken by the said R.D.G. under the said 24 work orders pertaining to 24 Bata Brand Shops. Mr. Sekhar Basu, the learned Advocate would hold the bank draft and would deal with the same in the manner as was set out in Clause7. Of the agreement Bata India Ltd. would furnish the certificates evidencing deduction and deposit of Rs. 2,73,278/- being the statutory T. D. S. deducted as above, as well as any previous T.D.S. deducted within a period of four weeks of the said bank draft. It was further agreed that within seven days of the execution hereof the O.P. No. 3 would file an application for compunding the offence alleged and the R.D.G. architect would withdraw in writing the complaint lodged against Bata India Ltd. and the petitioners herein in the Court of the learned C.M.M. Calcutta in connection with G.R. Case No. 2729 of 2004. It has been further stipulated that the O.P. No. 3 shall also make an application for compounding of offences similarly in G. R. Case No. 2738 of 2004 and make an application before the Hon''ble High Court at Calcutta also for withdrawing the winding up proceeding. It was further stipulated that the Bata India Ltd. would make an application for compounding of offences and will withdraw the complaint dated 23-11-2004 lodged against Mr. Sagar Roy and others before the Station House Officer, Gurgaon and the complaint case lodged before the learned C.M.M. at Gurgaon, Haryana on 15-12-2004. It was further agreed and resolved by the parties to have their dispute settled and resolved through arbitration by an Arbitral Tribunal comprising Hon''ble Mr. G.N. Roy, a former Judge of the Supreme Court of India and that the reference of the disputes to arbitration should be confined only to the works pertaining to Bata India Ltd.''s. Corporate Office at Gurgaon and Faridabad. Mr. Sekhar Basu. learned Advocate was upon receiving a written confirmation from Shri Rajat Datta. Advocate-on-Record on behalf of said Sagar Roy would release and hand over the bank draft to Mr. Rajat Datta, Advocate-on-Record of said Mr. Sagar Roy who shall be entitled to encash the bank draft for Rs. 1.60,00,000/- on account 24 work orders regarding the said 24 Bata Brand Shops as full and final settlement of the works undertaken in respect of the said 24 Bata Brand Shops. It was further resolved that the acts between the parties insofar as it relates to works undertaken and payment made therein in respect of the works undertaken for the said 24 Bata Brand Shops covered under the said 24 work orders would stand satisfied by both the parties and no claim may be raised by other party in compliance, with the said terms of the settlement the petitioner No. 1 drew a bank draft of 17-2-2005 on the said Bank of India, C.A.G. Branch for a sum of Rs. 1.57,26,722/- in full and final payment of the works undertaken by the said architect R. D. G. in respect of 24 Bata Brand Shops and handed over the T.D.S. Certificate evidencing deduction of Rs. 2,73,278/- to the said architect R.D.G. With regard to the remainder of the disputes in connection with the execution of the work order the matter has been referred to the sole arbitration of Hon''ble Mr. G.N. Ray, former Judge of the Supreme Court of India which is pending. During the pendency of such arbitration proceeding the O.P. No. 2 who is a complete stranger and does not have any privity of contract with the petitioner No. 1 company instituted the complaint before the learned C.M.M. Calcutta alleging offences u/s 120B/420 of the IPC with the accusation that the said architect R.D.G. failed and neglected to pay Rs. 12,57,435/- in respect of the work done by the said O.P. No. 2 on its behalf in respect of the work orders issued by the petitioner No. 1 /company. The allegations in the FIR even if believed to be true and taken in their entirety do not disclose essential ingredients of the offence of cheating within the meaning of Section 415 of the IPC and throughout the length and breadth of the FIR, there is no dishonest and fraudulent representation held out by the petitioners to the O.P. No. 2 resulting in delivery of property which constitutes an offence u/s 420 of the IPC. Since there was no privity of contract between the petitioner No. 1 and O.P. No. 2 the claim of the O.P. No. 2 is maintainable only against the O.P. No. 3 but not against the petitioners herein. The petitioners have been illegally roped in with the ulterior purpose of harassing and humiliating them. The O.P. No. 2 does not have a legal right to enforce a claim in civil law against the petitioners and in view thereof the petitioners cannot be hauled up to have committed a cognizable offence. There is no material on record to show that the petitioners acted in concert of the said architect R.D.G. or that the petitioners are in any way responsible for the alleged non payment of dues by the said architect R.D.G. to the O.P. No. 2. In fact, the petitioners have cleared all dues payable to the said architect R.D.G. and in terms of memorandum of settlement it is beyond the power of the petitioners to dictate the manner in which the same is to be disbursed by the said architect R.D.G. Accordingly, the criminal case instituted by the O.P., No. 2 under New Market Police Station Case No. 40 dated 21-3-2007 u/s 120B/420 of the IPC should be quashed.

5. I have heard Mr. K.T.S. Tulsi, learned Advocate appearing for the petitioner and Mr. Sudipto Moitra, learned Advocate appearing for the O.P. No. 2. I have also heard Mr. Rajat Datta, learned Advocate-on-Record appearing for the O.P. No. 3. Mr. Swapan Kumar Mallick, learned Advocate appearing for the State of West Bengal has also been heard.

6. Within the meaning of Section 415 of IPC deception of a person is one of the requirements of that Section and such deception occurs when the offender fraudulently or dishonestly induces the person cheated to deliver any property to any person or to consent that any person shall retain any property or intentionally inducing that person to do or omit to do anything which he would do or omit if he were not so deceived and which act or commission causes or is likely to cause damage or harm to that person. The essence of the contention of the complainant who is the O.P. No. 2 herein is that had not the Bata India Ltd. induced the complaint to undertake the job or to continue with the job till it was finished, the O. P. No. 2 would not have continued with the job and left the job unattended to after the O.P. No. 2 and his men returned from Gurgaon to Calcutta. Mr. Sudipta Maitra, learned Advocate appearing for the O.P. No. 2 who is the main contesting party in this revisional application submits at the very outset with reference to certain decisions of the Supreme Court that this Court must not sit to scuttle the process of investigation in view of the fact that the FIR has disclosed a commission of the offence of cheating. This Court''s attention has been drawn to certain paragraphs of the petition lodged with the learned C.M.M., Calcutta which later came to be treated as an FIR via 156 (3) of the Cr. P.C. to buttress the complainant''s point that the FIR has clearly made out a case of cheating against the Bata India Ltd. The element of cheating as is alleged to have been presented in the FIR first appears in paragraph No. 9 wherein it has been averred that when the O.P. No. 2 returned to Kolkata from Gurgaon after being disappointed with non payment of the dues it was O.P. No. 3 who called him to the Calcutta office of Bata India Ltd. and in the presence of the officials of the Bata India Ltd. the O.P. No. 3 Sagar Roy asked him to continue with the job telling that as soon as payment would be received by him from his principal i.e. the Bata India Ltd. he would make payment to him but O.P. No. 2 could not be convinced with the reasoning of the O.P. No. 3 and then the officials of the Bata India Ltd. joined to confirm and ratify the statement of Sagar Roy and requested the O.P. No. 2 to agree to complete the job at Gurgaon. Still then the O.P. No. 3 was not convinced and then petitioner No. 3 Mr. P. K. Nag at the request of other officials of the Bata India Ltd. agreed to give the O.P. No. 2 a written assurance and thus a written assurance came into being on 8-3-2004. The said written assurance reads as follows:

Mr. Maiti,

In responses to our earilier meeting and discussion we do hereby like to inform you that we have specially requested Mr. Sagar Roy to engage you and your staff in the proposed interior and exterior job at our office in Gurgaon.

You need not be worried regarding the payments as we have agreed to pay entire due amounts to Mr. Sagar Roy immediately after completion of the job and we shall ensure your payments from Mr. Sagar Roy at the time of releasing the payments to him.

7. Mr. Maitra banks upon this letter to argue that if the O.P. No. 2 had not been induced to do the job through the letter as aforesaid he would not have done the job and this letter is indicative of the dishonest intention on the part of the officials of the Bata India Ltd. In the subsequent paragraphs of the FIR certain words like ''inducement'', ''intentionally deceive'', ''dishonestly induced'', ''false and fraudulent representations'', have been used repeatedly so as to make out a case of cheating. Mr. Maitra addressed the Court with the argument though when in the context of the FIR alleging commission of cheating by the officials of the Bata India Ltd. investigation has been taken up by the police it is of no good praying for quashing of the proceeding. The decision in Rajesh Bajaj Vs. State NCT of Delhi and Others, has been cited in support of the proposition that quashing of a complaint on the ground that the complaint disclosed a commercial or money transaction is not justified because many a cheating is committed in the course of commercial or money transaction. In the State of Karnataka and Another Vs. Pastor P. Raju, it has been held that inherent power cannot be exercised to interfere with statutory power of police to conduct investigation into a cognizable offence. The decision in State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, has also been referred to by Mr. Maitra in support of his reasoning that stopping of investigation and quashing of a proceedings acting upon documents annexed to the petition u/s 482 of the Cr. P.C. is not permissible because it is impermissible for the Court to look into the material acceptability of which essentially is a matter for trial. Thus it is the argument of Mr. Moitra that the Court must only look at the FIR and no document at all and where the FIR disclosed a commission of cognizable offence there ends the matter, no matter whether the allegations of cheating would come out to be successful or not at the trial or at the end of the investigation. In the reported case investigation was said not to have been completed and at that stage the Hon''ble Supreme Court held that it was not permissible for the High Court to look into the materials attached to the revisional application by the petitioner praying for quashing of a proceeding. The decision in S.M. Datta Vs. State of Gujarat and Another, has been referred to which deals with the criteria for quashing of a proceeding and this decision began with the Privy Council decision in AIR 1445 PC 18 : 1945 46 Cri LJ 413 where Lord Porter observed "no doubt, if no cognizable offence is disclosed and still more, if no offence of any kind is disclosed, the police would have no authority to undertake an investigation". Beginning with this decision

their Lordships of (he Supreme Court traversed a number of decisions of the Supreme Court in the matter of quashing of a proceeding. The decision in Union of India (UOI) Vs. Prakash P. Hinduja and Another, has been cited. The decision in Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another, deals with quashing of criminal proceeding and it was held that the investigation should not be stopped at the initial stage and if the allegations make out a prima facie case quashing of a proceeding is not warranted. A voluminous judgment in Ram Narain Poply, Pramod Kumar Manocha, Vinayak Narayan Deosthali and Harshad S. Mehta Vs. Central Bureau of Investigation and Others, has also been adduced by Mr. Moitra.

8. Mr. K.T.S. Tulsi, learned Counsel for the petitioners began addressing the Court with the argument that the law is well settled by a catena of a decision of the Supreme Court that the complainant is required to show that the accused had dishonest and fraudulent intention at the time of commencement of the promise or of transaction and unless the dishonest intention is not present at the very beginning of the promise or commercial transaction mere failure to keep up the promise subsequently does not give rise to any criminal offence of cheating. It is submitted that the guilty intention which is called mens rea is an essential ingredient of cheating and it is necessary therefore to show that the offender had fraudulent or dishonest intention at the time of making the promise or else no offence u/s 420 of the IPC would lie. Thus according to Mr. Tulsi intention to deceive should be in existence at the time when the inducement was offered. I have been taken to the decisions in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, , Indian Oil Corporation Vs. NEPC India Ltd. and Others, , Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, . Raymond Ltd. (JKFT Division) Vs. H.V. Doshi and Brothers Pvt. Ltd., , Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others, , State of Andhra Pradesh Vs. Golconda Linga Swamy and Another, , Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, . U. Dhar and Another Vs. The State of Jharkhand and Another, . Ajay Mitra Vs. State of M.P. and Others, , S.W. Palanitkar and others Vs. State of Bihar and another, , Alpic Finance Ltd. Vs. P. Sadasivan and Another, , Hriday Ranjan Prasad Verma and Ors. v. State of Bihar 2000 (2) Scale 694 : 2000 Cri LJ 2983, G.V. Rao v. L.H.V. Prasad reported in 2000 CriLJ 3487 , G. Sagar Suri and Another Vs. State of U.P. and Others, , Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, , Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, , State of Haryana and others Vs. Ch. Bhajan Lal and others, , Smt. Kamla Vs. State of Punjab, , Kailash Verma Vs. Punjab State Civil Supplies Corporation and Another, , Uma Shankar Gopalika v. State of Bihar and Anr. 2005 (10) SCC 336, Vijay Rao v. State of Rajasthan and Anr. 2005 (7) SCC 69, by the learned Advocate for the petitioners in support of his reasoning that if the decisions as above are applied to the FIR of the case it would not be contradicted that the same speaks of civil dispute sans criminality.

9. In an attempt to reconcile the two conflicting stand-points each supported with judicial pronouncement in their favour it has to be said at the outset that undoubtedly the jurisdiction u/s 482 of the Cr. P.C. has to be sparingly used, called in "rarest of rare case" and investigation must not be nipped in the bud but there is a rider which is this that the petition of complaint or the FIR must disclose the essential ingredients of an offence which is complained of. The plethora of decisions cited by the learned Counsel for the petitioner are consistent on the point that guilty intention which is essential for an offence of cheating must not only be established, must be shown to have existed when the inducement was offered, for unquestionably there is distinction, though thin, between breach of contract and cheating and this distinction has to be made with reference to the intention of the accused at the time of alleged inducement which has to be judged or adjudicated upon on the totality facts and circumstances, acts of the accused subsequent to and antecedent to the alleged inducement. The petition of complaint in paragraph No. 14 as also in the preceding paragraphs have hinted that there was a criminal conspiracy of cheating the O.P. No. 2 by and between the Bata India Ltd. and Mr. Sagar Roy and it was because of inducement to deceit committed by the officials of the Bata India Ltd. and Mr. Sagar Roy that the O.P. No. 2 was defrauded. But the matter of the fact is that Mr. Moitra referred to the judgment of this Court in C.R.R. No. 338 of 2005 and C.R. R. No. 337 of 2005 initiated by the officials of the Bata India Ltd. praying for quashing of investigational proceedings because of lodgment of two criminal cases being New Market Police Station Case No. 280 u/s 420/120B of the IPC and New Market Police Station Case No. 278 under the said Section of the Law by the O.P. No. 3, Mr. Sagar Roy. It appears from the certified xerox copy of the judgments of this Court in the aforesaid two cases that before the O.P. No. 2 filed this complaint with the learned C.M.M. in Calcutta on 17-3-2007 alleging commission of offence of cheating against the officials of Bata India Ltd. and Mr. Sagar Roy/O.P. No. 3 Mr. Sagar Roy had instituted two FIRs as early as in the year of 2004 against the officials of Bata India Ltd. alleging that he was cheated by the officials of Bata India Ltd. since he was induced to come into contract with the Bata India Ltd. in the matter of the project at Gurgaon and payments were not made in spite of alleged assurances. It is true that in the State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, their Lordships of the Supreme Court held that annexure to the petition of complaint or the FIR cannot be considered because they are subject to test at the time of trial. Both the parties here in this proceeding relied on certain documents which are admitted and not challenged. That there was an agreement in writing between Bata India Ltd. and O.P. No. 3 is not disputed. Admittedly contract was between Bata India Ltd. and O.P. No. 3 and there was no privity of contract between the Bata India Ltd. and the O.P. No. 2. O.P. No. 2 and his men were employed by the O.P. No. 3 as his agents to do the work of interior and exterior decoration as an employee/agent of the said O.P. No. 3 and admittedly Bata India Ltd. was not required or obligated upon to make direct payments to the O.P. No. 2 and his men. The position was that payments were to be made from time to time by the officials of

the Bata India Ltd. in favour of the O.P. No. 3 and in the eye of the law O.P. No. 2 was not known to the Bata India Ltd. because payments in favour of the O.P. No. 2 and his men was a matter between the said O.P. No. 2 and the O.P. No. 3. The question, therefore is whether prima facie the petition of complaint discloses existence of guilty intention or mens rea in the mind of the officials of the Bata India Ltd. to cheat the O.P. No. 2 at the very inception of the project. The project was of exterior and interior decoration and architecture to be made in the corporate office of the Bata India Ltd. at Gurgaon and there was a privity of contract unquestionably between O.P. No. 3 and the officials of the Bata India Ltd. The petition of complaint reveals that in the matter of commencement of the project through Mr. Sagar Roy, proprietor of M/s. R.D.G. Interior Decoration Exterior Architecture Mr. Sagar Roy called the O.P. No. 2 in February 2004 and asked him to do the job. In the discussion with O.P. No. 2 at that time allegedly the officials of the Bata India Ltd. were present and they explained the nature of the job to be undertaken. The O.P. No. 2 told Mr. Sagar Roy that unless outstation work charges were paid and residential accommodation was provided for it would not be possible for him to undertake the job. The proposal was accepted by Mr. Sagar Roy after discussion with the officials of the Bata India Ltd. Mr. Sagar Roy told the O.P. No. 2 that the payment would be on short term credit basis and it was Mr. Sagar Roy who assured the O.P. No. 2 of payment as and when the said Mr. Sagar Roy would receive payment from Bata India Ltd. Up to the stage no involvement of the officials of the Bata India Ltd. except explaining the nature of the job to be done could be found. Work commenced in February 2004. On 23-2-2004 Mr. Sagar Roy made payment of Rs. 1 lac to O.P. No. 2 and requested him to continue the work without any break and Bata India Ltd.''s officers supervised the job. By the end of February 2004 a sum of Rs. 1 lac which was paid by the O.P. No. 3 to the O.P. No. 2 was exhausted and further money was asked for from Mr. Sagar Roy who then requested the O.P. No. 2 to continue with the work till the middle of March 2004 with an assurance of payment by the time. But on 1-3-2004 the O.P. No. 2 and his workers returned back to Kolkata because of non payment of money. Thus it is prima facie clear from the FIR itself that when the O.P. No. 2 was approache by the O.P. No. 3 there was no talk between the O.P. No. 2 and the Bata India (sic) regarding payment. Whatever verbal contract was made it was so made between a contractor and his subagent. The intervention of Bata India Ltd. was sought for by Mr. Sagar Roy when persuasion of Mr. Sagar Roy failed in March 2004. On 8-3-2004, as per the petition of complaint, Mr. Sagar Roy called on the O.P. No. 2 at the Bata Office in Calcutta and requested him to continue with the job with assurance of making payments. But the O. P. No. 2 was not convinced. Mr. Sagar Roy stated in front of the officials of Bata India Limited that there would be no difficulty in making payment as the senior officials of Bata India Ltd. specifically assured of payment. The officials of Bata India Ltd. allegedly confirmed and ratified the assurance of Mr. Sagar Roy to the O.P. No. 2 and requested the O.P. No. 2 to agree to complete the job with assurance of making proper payments. Still then the O.P. No. 2 was not convinced and then Mr. Nag, the petitioner No. 3

herein at the request of the other officials of the company wrote the letter as reproduced above. The question, therefore, is whether in the circumstances in which the letter was issued by the petitioner No. 3 it can be said that it is an outcome of false and fraudulent assurance with intention of cheating. Can it be said that this letter was written with intention to deceive the O.P. No. 2 by not making payments? It is ex facie clear that at the commencement of the job there was unquestionably no presence of the guilty intention, no inducement, no false promise on the part of the Bata India Ltd. It is a letter dated 8-3-2004 which according to the complainant constitutes the element of cheating. The letter came into being when the complainant was adamant not to do the job because admittedly his payments remained outstanding as against Mr. Sagar Roy and even when the O.P. No. 2 was not convinced with the oral assurance of Mr. Sagar Roy as also the oral assurance of Bata India Ltd., then one of the officials of the Bata India Ltd. gave the above writing assuring of payment to Mr. Sagar Roy and asssuring of payment to O.P. No. 2 through Mr. Sagar Roy. Between May 20, 2004 and March 2007 which is a long period of three years the O.P. No. 2 who was to receive payments only from the O.P. No. 3 did not initiate any action against the O.P. No. 3 and the complaint was lodged three years after O.P. No. 3 had filed two criminal cases against the Bata India Ltd. and it can hardly be said that the Bata India Ltd. hatched up a conspiracy with the O.P. No. 3 in the matter of deceiving the O.P. No. 2 because the O.P. No. 3 was admittedly entitled to receive huge sums of money against the Bata India Ltd. who deferred payment alleging defects in work. Mr. Swapan Kumar Mallick, learned advocate appearing for the State of West Bengal produces the case diary which discloses that the statements of number of witnesses and accused including Mr. Sagar Roy have been recorded u/s 161 of the Cr. P.C. It has come out from the case diary that following two complaints lodged by Mr. Sagar Roy against Bata India Ltd. and one company proceeding for winding up of business of Bata India Ltd. there was an agreement between Mr. Sagar Roy and Bata India Ltd. for referring the disputes as between them to the sole arbitration o f Hon''ble Justice G.N. Ray, a former Judge of the Supreme Court of India. I would have overlooked the averments in the revisional application relating to the facts dealing with the arbitration proceeding had not such fact been found in the case diary. Allegedly out of a sum of Rs. 12,57, 435/- the O.P. No. 3 made payment of Rs. 2,50,000/-. As has been held in the judgments in CRR No. 338 of 2005 and CRR No. 337 of 2005 as referred to by Moitra which was initiated by the Bata India Ltd. for quashing of the two criminal cases lodged by the O.P. No. 3 that Bata India Ltd. made total payment of Rs. 2,90.00.000/- to the O.P. No. 3 Mr. Sagar Roy during the ongoing work from time to time. And thus it appears that out of said Rs. 2,90,00,000/- O.P. No. 3 made payment of Rs. 2.50,000/- to the O.P. No. 2 while balance of Rs. 1,52,72,281/- remained outstanding for payment by the officials of Bata India Ltd. in favour of the O.P. No. 3 after payment of Rs. 2,90,00,000/-. In this scenario it can hardly be said that the letter dated 8-3-2007 was written by the petitioner No. 3 on behalf of the Bata India Ltd. just to defraud the O.P. No. 3 and save and except that solitary letter there is no material to hold that the O.P. No. 2 was dishonestly induced by the Bata India Ltd. to undertake the job of carpentry and interior and exterior decoration without intention to make payment. There was no liability on the part of the Bata India Ltd. to make payment directly to the O.P. No. 2. In the office of the Bata India Ltd. the O.P. No. 3 tried to convince the O.P. No. 2 to resume the work with promise of payment but as the O.P. No. 2 was not convinced then the petitioner stepped in and tried to convince the O.P. No. 2 but still when he was not convinced then came the written assurance from the petitioner No. 3 after the officials of the Bata India Ltd. consulted amongst themselves. This is not the evidence but is a version in the petition of complaint and it can hardly be said that having considered the totality of the facts presented in the petition of complaint and materials appearing from the case diary it can be construed to be a case of cheating. After the O.P. No. 2 resumed the job by proceeding to Gurgaon again he was paid Rs. 1,50,000/- by O.P. No. 3. In Ajay Mitra Vs. State of M.P. and Others, it has been held that if accused at the time he promised to pay cash against delivery had an intention to do so fact that he did not pay does not make it a case of cheating. This decision referred to Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, and State of West Bengal and Others Vs. Swapan Kumar Guha and Others, . The decision in S.W. Palanitkar and others Vs. State of Bihar and another, is important in the sense that the agreement in the reported case did not require entrustment of any property to the appellants and no material was found to show that any of the appellants was entrusted with the property. In the decision in Alpic Finance Ltd. Vs. P. Sadasivan and Another, it was found that there was an agreement to pay quarterly against delivery of chairs. Respondents were not making regular payments and committed defaults. Their Lordships held that an honest man entering into contract is deemed to represent that he has present intention of carrying it out but having accepted the pecuniary advantage involved in the transaction if he fails to do so he does not necessarily evade the debt by deception. A distinction has been drawn between breach of contract and cheating in Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, where it has been said that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It was clearly held that to hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise and from mere failure to keep up the promise subsequently a culpable intention right at the beginning cannot be presumed. In the facts and circumstances at our hand this decision appears to be relevant. In fact, at the beginning of the commercial transaction there was evidently no element of intention to cheat. Payments were made to O.P. No. 3 who made payment of Rs. 1 lac to the O.P. No. 2 and work continued till February 2004 at the first phase where trouble occurred because of non-payment subsequently, O.P. No. 2 returned back to Kolkata. Then there took place again discussion among the parties and at this stage since O.P. No. 2 was not convinced of oral assurance, a written assurance was given by the petitioners and pursuant thereto he had returned back to

Gurgaon to resume the work and after he had gone there he was paid by O.P. No. 3 a sum of Rs. 1,50,000/- but then payment was stopped by the petitioners allegedly on the ground of defects in service culminating in arbitral proceeding. The decision in U. Dhar and Another Vs. The State of Jharkhand and Another, is relevant also in the case before us because in that case a somewhat similar situation arose Bokaro Steel Plant awarded a contract of certain works to T.C.P.L. Company who instead entered into contract with the complainant company. On completion of the work T.C.P.L. failed to pay the balance amount under the contract to the complainant. A complaint of cheating and criminal breach of trust was filed against the appellants alleging that the T.C.P.L. misappropriated the money received from the Bokaro Still Plant instead of paying it to the complainant company. Their Lordships held that the contract between Bokaro Steel and T.C. P.L. is one thing while the contract between the T.C.P. L. and the complainant is a different contract. The two contracts are independent of each other and payment of one has no relevance qua the other.

10. Having regard to all the circumstances I do not think that the petition of complaint read as a whole gives out a prima facie case of cheating or criminal breach of trust.

11. Accordingly, I allow the criminal revision and quash the proceeding. The, petitioners shall be deemed to have been discharged from the bail bonds. Urgent xerox certified copies, if applied for, be given to the parties as expeditiously as possible.

