
(2024) 04 CAL CK 0072

In the Calcutta High Court

Case No : Criminal Revision No. 2200, 3195 Of 2015, 316 Of 2016, IA No: CRAN 8 Of 2017, 14, 15, 16, 17, 19, 22, 24 Of 2019, 24 Of 2020 (CRAN 5515 Of 2017, 58, 1213, 1912, 1914, 3513, 4569, 4607 Of 2019, 885, 886 Of 2020)

Sanjiv Paul

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 29-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 418, 420
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2024) 04 CAL CK 0072

Hon'ble Judges : Bibhas Ranjan De, J

Bench : Single Bench

Advocate : Milan Mukherjee, Sandipan Ganguly, Dipanjan Dutta, Joydeb Ghorai, Diptesh Ghorai, Supradip Roy, Siddhartha Roy

Final Decision : Allowed

Judgement

Bibhas Ranjan De, J

1. All the three revision applications have been preferred with a prayer for quashment of the proceedings in connection with Complaint Case No. 21630 of 2014 under Sections 418/420/406/120B of the Indian Penal Code (for short IPC), presently pending before the Ld. Metropolitan Magistrate, 18th Court, Calcutta.

2. The aforesaid revisional applications arising out of the self-same cause of action and having identical facts and circumstances, will be disposed of via this common judgement.

Brief introduction of the parties:-

3. With respect to CRR 2200, Petitioner Sanjiv Paul is the non-executive Chairman of M/s. Tata Metalliks D.I. Pipes Limited since 1st April, 2013. Prior to that he was Director (non-executive) of the said company.

4. With respect to CRR 316, Petitioner Shyamal Kanti Mahapatra holds the post of Assistant Divisional Manager of M/s. Tata Metalliks D.I. Pipes Limited and Santanu Banerjee is the General Manager marketing and sales of the said company.

5. With respect to CRR 3195, Petitioner Dipak Kumar Banerjee held the post of Non-Executive Director of M/s. Tata Metalliks D.I. Pipes Limited till 15th June, 2014, but thereafter he ceased to be the Non-Executive Director of the said company.

6. Mr. Amit Malviya, Proprietor of M/s. Regent Techno is the common Opposite Party no. 2 in all the three revisional applications.

Background:-

7. The instant proceeding arose out of a complaint made by the common opposite party no. 2 in all the revisional applications. On 13.06.2014, the complainant/ opposite party no. 2 filed a petition of complaint before the Court of Ld. Chief Metropolitan Magistrate (for short C.M.M.), Calcutta which was registered as Case No. C/21630 of 2014. In the complaint it was alleged inter alia that the opposite party no. 2 is the sole proprietor of a firm named and styled as M/s. Regent Techno having its registered office at 123, Zone –II M.P. Nagar, Bhopal, Madhya Pradesh. In 2010, the petitioners in connection with CRR 316 of 2016 came to Bhopal for discussion of liaisoning work on behalf of M/s. Tata Metalliks D.I. Pipes Limited to discuss about the scope of D.I. Pipe business in Government PHED Sector. After Fruitful discussion, the abovementioned accused decided to appoint the proprietorship concern of the complainant/ opposite party no. 2 to do liaisoning work on behalf of Tata Metalliks for mutual benefit. Thereby, appointing the complainant's company as liaising dealer of the accused company. The complainant along with his father renders professional services of liaisoning to their clients across various states of the country with having expertise in procuring bulk and voluminous orders from different Governmental and Non-Governmental Departments and Organizations through their liaisoning work and pre-tender activities against pre-decided percentage of commission on the gross value of the order so procured.

8. Looking into the credentials of the complainant's firm, the accused appointed the firm of the complainant as Marketing Agent for the State of Madhya Pradesh in respect of marketing and selling of D.I. Pipes. A letter for appointment to that effect was issued on 29.09.2010 by the accused company. As per the terms of the said letter the accused company agreed to pay the commission to the firm of the complainant @ 2% for orders secured from Government Department and @ 1% for orders procured from private parties. It was also agreed that the Commission payable to the firm of the complainant/opposite party no. 2 can be increased as a special case in circumstances where procuring order will be a tedious and hectic job. At the time of grant of agency, it was also stated by the accused company that the firm of the complainant will also be awarded the

agency for procuring orders for the State of Chattisgarh. In the mean time, due to liaising efforts of the opposite party no. 2 herein, the accused company procured bulk orders from the State of Madhya Pradesh which resulted in the accused company becoming eligible to participate in Government tenders on Pan India basis. It has been further stated by the opposite party no. 2 herein that obtaining orders from Government Departments/ Madhya Pradesh Laghu Udyog Nigam Limited (for short MPLUN) is a tedious job and highest level of efficiency and extra ordinary skills are required to procure such orders. The accused company was unable to fulfill and/or comply with the requirements set by MPLUN. Therefore, the accused company decided to pay Rs. 1 crore as consultancy charges for pre-tender liaising activities. In order to approve the brand of the accused company for MPLUN tender, it was further agreed that commission @ 5.5% would be paid to the firm of the complainant as against previously agreed 2%, as it is a special case. It was further assured by the accused that such agreed remittances would be disbursed soon. Pursuant to such specific assurances, the complainant/opposite party no. 2 rendered its liaising services by incurring considerable out pocket expenses, pursuant to which the accused company was able to obtain bulk orders for supply of D.I. Pipes to the Government Departments of Madhya Pradesh. After securing such bulk orders the accused persons showed their true colours and backed out on their previous commitments made in writing.

9. The opposite party no. 2 herein after rendering his services requested the accused company to make payment of the pending expenses and commission through numerous letters, e-mails and correspondences but the accused very tactfully kept on delaying the payment of legitimate dues of the complainant. In reply to the e-mail dated 30.06.2011 of the firm of the complainant, the petitioners in connection with CRR 316 of 2016 vide e-mail dated 04.08.2011 stated that only 1% of the basic value of the orders from MPLUN till 31.03.2011 amounting to Rs. 10 lacs for pre-tender activities and 1% of the basic price of the private order would be remitted to the firm of the complainant. Thereby, the accused persons dishonestly withdrew their categorical representation and commitment which resulted in wrongful loss of the complainant. The firm of the opposite party no. 2 made numerous correspondences and sent various reminders for payment of its legitimate dues but no payment to that effect nor any valid reason for non-payment of the same was assigned. The due payment to the firm of the opposite party no. 2 by the accused company as alleged by the opposite party no. 2 herein, totals to Rs. 2,88,19,414.13/- (Rs. 1,00,00,000/- for consultation charges, Rs. 1,87,91,809.13/- for commission @ 5.5% for MPLUN order and Rs. 27,605/- for commission @ 1% for private orders) which has very illegally been misappropriated by the accused persons for MPLUN, exclusive of Government orders taken after 03.08.2011 and private orders taken after 31.03.2011. In addition to that the accused persons, when being confronted with the issue of non-payment of legitimate dues of the firm of the opposite party no. 2, arbitrarily terminated the agency of the firm of the complainant against the

agreed terms and conditions and without any notice nor any reason assigned to that effect. Finding no alternative, on 20.11.2013 the opposite party no. 2 sent a legal notice to the accused persons for repayment of due amount but no such payment was made. By doing such acts the accused thoroughly committed offences punishable under Section 406/418/420 read with Section 120B of the IPC and as a sequel the impugned proceeding was initiated at the behest of the opposite party no. 2.

10. Vide an order dated 13.06.2014, the Ld. CMM Calcutta took cognizance of the complaint and transferred the same to Ld. Metropolitan Magistrate, 18th Court, Calcutta for enquiry and disposal.

11. Subsequently, Ld. Metropolitan Magistrate, 18th Court, Calcutta vide order dated 13.06.2014 issued process under Sections 418/420/406/120B of the IPC against all the accused persons. Aggrieved thereby, the petitioners have filed the instant applications with a prayer for quashment of the impugned proceedings.

Arguments advanced:-

12. Ld. Senior Counsels, appearing on behalf of the petitioners have mainly addressed the argument on the following points which stands as follows:-

- The office holder of a company cannot be made vicariously liable for the offences under the IPC alleged against the company as it is trite law that a person may be vicariously liable for an offence only where the statute by an express provision makes it a deeming fiction. In the instant case the petitioners have been impleaded as an accused only on the virtue of being functionary of Tata Metaliks Kubota Pipes Limited (for short TMKPL).
- In the instantaneous case, the Ld. Senior Counsels have tried to make this Court understand that the petitioners in connection with CRR 2200 of 2015 & CRR 3195 of 2015 have been impleaded despite having no role to play. In support of their contention they highlighted the complaint dated 17.10.2012, filed by the opposite party no. 2 herein prior to lodging of the instant case on 13.06.2014. In the prior complaint dated 17.10.2012, the names of the petitioners were not even mentioned. The complaint was made against one Rajesh Mishra, Santanu Banerjee and Shyamal Kanti Mahapatra. Thus, there arises no question of the petitioners in connection with CRR 2200 of 2015 & CRR 3195 of 2015, having any role to play in the course of action which promulgated the instant proceeding.
- That apart, the disputes in the instant case are purely contractual disputes, which may at best, be decided before a civil forum as there was a settled agreement between both the companies which was functional till 31.03.2011. In addition to that TMKPL had made payment of Rs. 27,99,420.28/- to M/s. Regent Techno (for short RT) which clearly demonstrated the bonafides of TMKPL. This whole scenario clearly directs to only the fact that the instant criminal proceeding has been initiated at the behest of the opposite party no. 2 with a motive to

coerce TMKPL to pay the demanded amount as a means of recovery proceedings.

- Sections 406/418/420 of the IPC cannot be said to be attracted to the instant case as basic pre-requisite of the aforementioned Sections are not present. In relation to Section 406 of the IPC, it envisages entrustment of property and subsequent misappropriation thereof by the accused as its fundamental requisite but no such entrustment was made by RT to TMKPL. As per as Sections 418 & 420 of the IPC are concerned, fraudulent representation at the inception and inducement thereby of the aggrieved to deliver any property are fundamental requisites. But in the instant case no allegation of any misrepresentation by the petitioner and fraudulent inducement subsists. In addition to that TMKPL has already paid RT its dues as calculated by TMKPL. Thus, in no manner the abovementioned Sections are attracted to the factual matrix of the case.

13. In support of their contentions, the Ld. Senior Counsels have taken assistance of the following cases:-

- Vinod Natesan v. State of Kerala & Ors. reported in (2019) 2 SCC 401
- MedMeme LLC & Ors. v. iHorse BPO Solutions Private Limited reported in (2018) 13 SCC 374
- Binod Kumar & Ors. v. State of Bihar & Anr. reported in (2014) 10 SCC 663
- Hotline Teletubes and Components Ltd. & Ors. v. State of Bihar & Anr. (2005) 10 SCC 261
- Dr Sharma's Nursing Home v. Delhi Admn. & Ors. (1998) 8 SCC 745
- S.K. Alagh v. State of Uttar Pradesh & Ors. (2008) 5 SCC 662
- Asoke Basak v. State of Tamil Nadu & Anr. (2010) 10 SCC 660
- Sharon Michael v. State of Tamil Nadu & Anr. reported in (2009) 3 SCC 375
- J. Th. Zwart & Ors. v. Indrani Mukherjee reported in (1990) 1 Cal LT 99
- Mahmood Ali & Ors. v. State of U.P. & Ors. reported in 2023 SCC OnLine SC 950
- Raymond Ltd. (JKFT Division) v. H.V. Doshi & Brothers Pvt. Ltd. reported in 2006 SCC OnLine Cal 31.
- Naresh Kumar & Anr. Vs. The State of Karnataka & Anr. reported in 2024 SCC OnLine SC 268

14. Ld. Senior Counsel appearing on behalf of the common opposite party no. 2 submitted that the instant revision application is not maintainable as entire submission on behalf of the petitioners rests on a particular defense theory which cannot be entertained at this stage invoking Section 482 of CrPC.

15. Ld. Senior Counsel has further contended that this Court cannot act as a Court of appeal as petitioners relied on some documents which are private in

nature and not admitted by the opposite party no. 2. For that reason those documents filed on behalf of the petitioners cannot be looked into at the time of considering an application under Section 482 of CrPC.

16. It is submitted on behalf of the opposite party no. 2 that facts highlighted in the written complaint by the opposite party no. 2 constitute the offence of cheating and criminal breach of trust.

17. In support of his argument Ld. Senior Counsel relied on the following cases:-

- State of Haryana Vs Bhajanlal reported in AIR 1992 SC 604
- Janata Dal-Vs- H.S Chowdhuri (1992) 4 SCC 305
- Arbinda Shan Vs. State of Kerala 1985 Cr. LJ 1389 (Ker.)
- State of Orissa Vs. Saroi Kumar Sahoo (2006) 2 SCC (Cri) 272
- Ram Biraj Debi Vs. Umesh Kumar Singh AIR 2006 SC 2035
- State of West Bengal Vs. Swapan Kumar Guha reported in AIR 1982 SC 949
- Jayant Vitamins Ltd. Vs. Chaityna Kumar reported in AIR (1992) 4SCC 15
- State of Uttar Pradesh Vs. Narayan Kr. Patodia reported in AIR 2000 SC (Cri) 812
- State of Haryana Vs. Bhajan Lal reported in AIR 1992 SC 604
- Union of India Vs. B.R. Bazar reported in (1994) 2 SCC 277
- Kamala Debi Agarwal Vs. State of West Bengal reported in AIR 2002 SCC (Cri) 200.

Ratio of the cases relied on behalf of the parties

18. From the compilation of judgments relied on behalf of the petitioners, the following ratios can be elicited which stand as follows:-

- Ld. Senior Counsels appearing on behalf of the petitioners through the cited judgements have tried to impress this Court that where a dispute which is essentially of a civil nature, is given cloak of a criminal offence, then such disputes can be quashed, by exercising inherent power under Section 482 of the CrPC.
- A mere breach of a contract, by one of the parties, would not attract prosecution for criminal offence in every case. It is required to be shown in order to give rise to the offence of cheating, that the accused had fraudulent or dishonest intention at the time of making the promise.
- It has been further contended on behalf of the petitioners that allegations contained in the complaint are to be taken on their face value. Even if all the allegations mentioned in the complaint are considered to be true to its entirety, the basic essential ingredients of the Sections 406/418/420 of the IPC are

missing. The mere fact that the petitioners did not pay the balance money to the opposite party no.2 does not amount to criminal breach of trust.

- The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence. If there is nothing to show that the accused who hold different positions in the company made representations in their personal capacity then they cannot be made vicariously liable only because they are employees of the company.

19. Per contra, Ld. Senior Counsel appearing on behalf of the opposite party no. 2 too, has relied on some judgements in order to swing the attention of the Court in his favour. He has taken assistance of the following ratios which can be summarized as follows:-

- The High Court should normally refrain from giving a pre-mature decision in a case wherein the entire facts are extremely incomplete and hazy, moreso when the evidence has not been collected and produced before and issues are of great magnitude and cannot be seen in their proper perspective without sufficient materials.
- The inherent power has to be used sparingly that too in the rarest of the rare cases. The statutory power of investigation by the police cannot be interfered with under inherent power as the investigation into a cognizable offence is a statutory power of the police and superintendence thereof is vested with the State Government. The High Court is not justified in interfering with it without any compelling and justifiable ground.
- When prima facie case of forgery against the accused persons have been established, merely because of a civil proceeding between the same parties, the criminal proceedings cannot be quashed.

Decision of this Court:-

20. The entire allegations in the complaint would only show that there was a business transaction between the parties and there was an agreement between the parties wherein the petitioner's Company TMKPL engaged the complainant's Company as the marketing agent of TMKPL in the State of Madhya Pradesh vide appointment letter 29.09.2010 wherein it was agreed that 2% commission will be paid for orders secured from Government Departments and 1% on orders secured from private agencies. This business transaction subsisted for a considerable period of time and TMKPL paid an amount of Rs. 27,99,420/- in discharge of its agreed payment of commission. The accused company had offered to enhance the commission by 3.5% for Government orders. However, a dispute cropped up when the opposite party no. 2 asked to increase the commission @ 6.6%. When amount went out of the capacity of the petitioner's company, TMKPL decided to put an end to the agreement.

21. Before going into the merit in terms of no love lost relationship between the

parties, I propose to focus on nitty-gritty of the Provisions of Section 420 & 406 of the IPC as under:-

" S. 420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

S. 406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Read more at: <https://devgan.in/ipc/section/406/>"

22. Section 420 of the IPC deals with the offence of cheating and dishonestly inducing delivery of property. This offence is committed when a person dishonestly induces another person to deliver any property to any person, ought to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed and which is capable of being converted into valuable security.

23. On the other hand, nuts and bolts of Section 406 of IPC is when a person entrusted with property or with dominion over property dishonestly misappropriates or converts to his own, uses that property or uses or disposes of that property in violation of any direction of law, the same is said to be an offence of criminal breach of trust.

24. Having given my careful thought to the provision in terms of principle laid down by the Hon'ble Apex Court, I am of the view that mere breach of contract cannot give rise to criminal prosecution whereas fraudulent or dishonest intention is the basis for the offence of cheating.

25. However, in terms of ratio of referred cases (supra) it is apt to notice that in order to invoke Sections 406 & 420 of the IPC, it is essential that the complainant should prima facie establish the presumption of intention in the mind of the petitioners to cheat and/or defraud the complainant/opposite party no. 2 herein right from the inception. And such an alleged act should have resulted in wrongful loss for the complainant/opposite party no. 2 herein and wrongful gain for the petitioners.

26. The essential ingredients of the offence under Section 418 of IPC, which deals with cheating with knowledge, are lacking in the complaint to constitute the alleged offence and particularly the entire allegation do not disclose what was the inducement made by the accused, their fraudulent and dishonest intentions and what wrongful loss was caused to the complainant to attract the ingredients of the offence alleged. The entire allegation do not prima facie constitute the ingredients of the alleged offence under Section 418 of IPC.

27. Above all the main allegation of the complaint and the charge sheet disclosed

that there was conflict with regard to the rate of commission which led to a dispute between the parties in terms of settlement of accounts especially. In no stretch of imagination a dispute with regard to settlement of accounts can be adjudicated in a Criminal Court as it is predominantly a civil matter.

28. It is trite law that the inherent powers of the High Court under Section 482 of the CrPC should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature.

29. It is also a trite law that the criminal courts are not meant to be used for settling scores or pressurize parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance.

30. The sequence of facts delineated in the complaint do not suggest any kind of initial deception or entrustment or misappropriation at the behest of the petitioners.

31. Thus, no option is left to this Court but to quash the proceedings to prevent gross abuse of process of Court. Accordingly, the proceedings impugned in these revision applications are liable to quashed.

32. As a sequel, CRR No. 2200 of 2015, CRR No. 316 of 2016 & CRR No. 3195 of 2015 are hereby allowed.

33. In the premises set forth above, the proceedings in connection with Case No. C/21630 of 2014 under Sections 418/420/406/120B of the Indian Penal Code, presently pending before the Ld. Metropolitan Magistrate, 18th Court, Calcutta and all subsequent proceedings there with are hereby quashed.

34. Interim order, if there be any, stands vacated.

35. Connected applications, if there be any, stand disposed of accordingly.

36. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

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