

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

C.R.R. 1518 of 2010

Indrojit Ghosal & Another
Vs.
The State of West Bengal & Another

For the Petitioners : Mr. Sourav Chatterjee
Ms. Namrata Chatterjee

For the State : Ms. Sujata Das

For the Opposite Parties : Mr. Vikash Baisya
Ms. Ranjana Seal

Heard on : 5th December, 2023

Judgment on : 5th December, 2023

The Court:

1. This application under Section 482 of the Code of Criminal Procedure is directed against the proceeding arising out of New Market Police Station Case No. 46 of 2006 corresponding to G.R. Case No. 791 of 2006 pending before the learned Metropolitan Magistrate, 6th Court, Calcutta, as well as the order passed therein by the learned Metropolitan Magistrate, 6th Court, Calcutta on 12.01.2010.
2. Briefly stated, Director of Neosa Electronics Private Limited on 30.3.2006 informed the Officer-in-Charge, New Market Police Station in writing

that he entrusted Mr. Indrajit Ghoshal and Mr. S. Roy partners of South East Agritech Industries having its office at 162/456/2D, Lake Gardens, Kolkata – 45, with 125 pieces of 21” Sony Colour Televisions set vide Invoice No. SC/002602/05-06 dated 31.01.2006 valued Rs. 1495000.00 and received a cheque bearing no. 008089 dated 02.03.2006 for Rs. 1495000.00 drawn on UTI Bank Ltd. Tollygunge Branch. The cheque was presented and returned because of insufficient fund. It is further contended that upon inquiry the informant came to know that the aforesaid persons procured huge quantities of electronic goods from different businessmen and sold them out at a very low price for their personal gain.

3. On the basis of such information, New Market Police Case No. 46 of 2006 was registered on 30.3.2006.
4. Police took up investigation which culminated into submission of charge sheet.
5. Learned Trial Court refused to accede the prayer of the accused persons who sought for an order of discharge.
6. Mr. Chatterjee, learned counsel appearing on behalf of the petitioner in course of hearing draws my attention to the letter issued by Sony India Private Limited dated 30.01.2006 and submits that the accused persons had no obligation to discharge towards the Neosa Electronics Private Limited.
7. Neosa Electronics Private Limited was asked by the Regional Manager of Sony India Private Limited to deliver 125 pieces of television set of a particular model to South East Agritech Industries – cum - Partnership business run by the petitioner and Sony India Private Limited took the responsibility to

collect the entire payment from South East Agritech Industries and to pay the same to Neosa Electronics Private Limited.

8. According to Mr. Chatterjee, ex facie, this is a commercial transaction. There is nothing to indicate that since inception the petitioner had the able mind to dupe the Neosa Electronics Private Limited moreover Neosa Electronics Private Limited could not have claimed any money from the petitioner in view of the letter given by the Sony India Private Limited.
9. It is further adverted that the transaction since out and out is a commercial one and civil in nature, the criminal proceeding is being used as a tool to twist the arm in order to realise the money.
10. To buttress his contention, Mr. Chatterjee relies on a decision of the Hon'ble Supreme Court in the case of ***Hotline Teletubes and Components Ltd. & Others vs. State of Bihar & Another*** reported in ***(2005) 10 SCC 261*** where in it is held :-

“It appears from a bare perusal of the complaint that it is a case of purely the civil liability and no criminal offence is disclosed, much less offences either under Section 406 or 420 IPC. So far as the High Court is concerned, it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In our view, allowing such prosecution to continue would amount to an abuse of the process of court and to prevent the same, it would just and expedient to quash the same.”

11. Refuting such contention Mr. Baisya, learned counsel representing the opposite party no. 2, submits that the accused persons admittedly received the television set worth of Rs.14,95,000/- and acknowledging such liability the cheque was issued by the accused persons. Knowing fully well that the cheque would not be encashed or honoured consciously they induced the opposite party no. 2 to deliver the television set and they did not discharge their liability to pay. The accused persons, therefore, committed offence within the meaning of Section 420 of the Indian Penal Code. Considering the quantum of money, involved in the transaction which was solitary in nature the trial may be allowed to continue. Let the trial roll at its logical conclusion.
12. True it is the petitioners, received the telephone set worth of Rs.14,95,000/- from the opposite party no. 2 and issued a cheque of equivalent amount which is an admission of their liability as partners to pay. The cheque was dishonoured. In order to realize the money the drawee of the cheque had the opportunity to initiate a proceeding under Section 138 of the Negotiable Instrument Act. But the opposite party no. 2 preferred to initiate a criminal proceeding. This is in fact, the civil dispute, commercial in nature.
13. Admittedly, the Regional Manager, Sony India Private Limited instructed the opposite party no. 2 to deliver the television set to raise the bill in the name of South East Agritech Industries while the Regional Manager took the sole responsibility for the payment.
14. There was no interaction between the opposite party no. 2 and the petitioners regarding this transaction. Therefore, there is every reason to hold

that the petitioners did not have any opportunity to induce the opposite party no.

2.

15. Mr. Baisya, relied upon the decision of the of the Hon'ble Apex Court in ***Iridium India Telecom Ltd. Vs. Motorola Incorporated & Ors.*** pronounced in ***Criminal Appeal No. 688 of 2005.*** In that judgement the Hon'ble Apex Court held

“42. A bare perusal of the aforesaid section would show that it can be conveniently divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to: either (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The explanation to the section would clearly indicate that there must be no dishonest concealment

of facts. In other words, non-disclosure of relevant information would also be treated as a mis-representation of facts leading to deception.”

16. Therefore, with the risk of repetition, I would like to conclude that when there was no inducement from the end of petitioners rather it is palpably clear that the criminal proceeding has been initiated as a coercive measure, the criminal proceeding under Section 420 / 120B of the Indian Penal Code, if is allowed, to remain in force it would amount to abuse of process of law.
17. To avert such situation, I am inclined to invoke the provision under Section 482 of the Code of Criminal Procedure to quash the proceeding.
18. The criminal revision is, thus, disposed of.
19. Let a copy of the order be sent to the learned Trial Court for information and necessary action.
20. Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Siddhartha Roy Chowdhury,J)