

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1706 of 2014

Jhantu Haldar

-Vs-

The State of West Bengal & Ors.

For the Petitioner : Mr. Sayan De
Mr. Kaustav Shome
Mr. Sayan Kanjilal

For the State : Mr. Avishek Sinha

Heard on : 20.02.2023, 08.09.2023

Judgment on : 22.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed for quashing of G.R. No. 467 of 2008 arising out of Siliguri Police Station First Information Report No. 135 of 2008 dated 24.04.2008 under Sections 420 and 34 of the Indian Penal Code pending in the court of the Learned Judicial Magistrate, 1st Court at Siliguri and the Charge-Sheet being charge sheet No. 103 of 2008 dated 11.08.2008.
2. On or about May 2005 the Opposite Party Nos. 2 and 3 had entered into an agreement with one Arup Nandy, a promoter for purchasing a flat. Accordingly the opposite party nos. 2 and 3 had applied for a housing loan

from the L. I. C. Housing Finance Limited for purchasing the said flat. The said finance company after carrying out necessary inspection and on being satisfied with the title of the said flat sanctioned the loan in favour of the opposite party nos. 2 and 3. The said finance company sanctioned a total amount of Rs. 4.80 lakhs. Out of total sanctioned loan amount Rs 3.25 lakhs was paid to the promoter, viz. Anup Nandy. It was alleged by the opposite party nos. 2 and 3 the amount was disbursed to the said Arup Nandy without their consent and knowledge.

3. The aforesaid promoter in the meantime inspite of entering into an agreement with the opposite party nos. 2 and 3, even after receipt of a part of the consideration amount of the said flat sold the same to a third party without intimating the opposite party nos. 2 and 3.
4. The opposite party nos. 2 and 3 after initial payment of installments to the said finance company discontinued to pay the installments.
5. After a lapse of 3 years on or about April 2008 the opposite party nos. 2 and 3 filed an application under Section 156(3) of the Code of Criminal Procedure for alleged commission of offences punishable under Section 420 read with Section 34 of the Indian Penal Code against the Petitioner and others before the Learned Additional Chief Judicial Magistrate at Siliguri.
6. On the basis of the said petition of complaint and upon direction of the Learned Additional Chief Judicial Magistrate, Siliguri the Petitioner has been arraigned as accused in Siliguri Police Station First Information Report no. 135 of 2008 dated. 24.04.2008 under Sections 420 and 34 of the Indian Penal Code.

7. The investigating agency upon completion of investigation submitted Charge-Sheet and/or police report being Charge-Sheet No. 103 of 2008 dated 11.08.2008 under Sections 420 and 34 of the Indian Penal Code against the petitioner and others for commission of offences punishable under Section 420 read with Section 34 of the Indian Penal Code.
8. One of the Charge-Sheeted accused namely Manoranjan Das the area manager of the said finance company had approached this Hon'ble Court with a prayer for quashing of the Charge-Sheet and this Hon'ble Court upon perusal of the case diary and after hearing the Learned Advocates for the Petitioner therein and the State was pleased to quash the Charge-Sheet in respect of the Petitioner therein.
9. The Learned Advocate for the petitioner stated in order to cheat a person, it had to be proved that intention to cheat existed at the time of inducement was offered. Nowhere in the four corners of the petition of complaint has any such allegation been leveled against the petitioner, since he was the recovery agent.
10. Section 415 of the Indian Penal Code defines 'cheating' as 'whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property, is said to cheat'.

11. To constitute the offence of cheating as defined in Section 415 of the Indian Penal Code, it is incumbent upon the complainant to indicate that the accused had the intention to cause damage or harm by his act or that his act was likely to cause damage or harm to the person deceived in mind, body and reputation.
12. The petitioner in no way is connected with the financial affairs of the said finance company, nor is he engaged in any way in disbursing loans as sanctioned by the said finance company.
13. The contents of the case diary revealed the petitioner to be a recovery agent, alien to the commercial transaction between the parties to the disputed agreement of Loan. It is improbable that the petitioner can be implicated in any manner with the alleged offence wherein he had absolutely no specific role to play.
14. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***¹ the Hon'ble Supreme Court has held as follows :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible

¹ 1992 Supp (1) SCC 335

guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

15. To allow to continue with the trial to the detriment of the petitioner, will be an abuse of process of law and unnecessary consumption of Court hours.
16. In view of the above discussion and the decisions cited, the criminal revisional application is allowed.
17. The proceedings being G.R. No. 467 of 2008, arising out of Siliguri Police Station First Information Report No. 135 of 2008 dated 24.04.2008, under Sections 420 and 34 of the Indian Penal Code pending before the Learned Judicial Magistrate, 1st Court at Siliguri is quashed.
18. Connected application if any is also disposed of accordingly.
19. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
20. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)