

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 4698 of 2022

IA NO:CRAN 2 of 2023

CRAN 3 of 2023

(Assigned)

Zarin Momim Khan @ Zareen Khan

Vs.

The State of West Bengal & Anr.

For the Petitioner :Mr. Ayan Bhattacharjee, Sr. Adv.
Ms. Priyanka Agarwal, Adv.
Ms. Priyanka Sarkar, Adv.

For the Opposite party no. 2 :Mr. Sourav Chatterjee, Sr. Adv.
Mr. Satadru Lahiri, Adv.
Mr. Jyotirmoy Talukdar, Adv.

For the State :Mr. Madhusudan Sur, Adv.
Mr. Dipankar Pramanick, Adv.

Last Hearing on :05.12.2024

Judgment on :22.01.2025

Bibhas Ranjan De, J.

1. This Court is dealing with an application invoking the inherent power under Section 482 of the Code of Criminal Procedure (for short Cr.P.C) for quashment of the FIR being Narkeldanga P.S. Case No. 254 of 2018 dated 27.11.2018 under Sections 406/420/506/120B of the Indian Penal Code (for short IPC) presently pending before the Court of Ld. Additional Chief Judicial Magistrate (for short ACJM), Sealdah.
2. The impugned FIR has its genesis from the purported complaint dated 16.11.2018 lodged by the opposite party no. 2 herein against the petitioner and the other co-accused. The main allegation leveled in the purported FIR is to the effect that the accused persons entered into a criminal conspiracy and in pursuance to that conspiracy the petitioner deliberately failed to appear as a guest artist at eight(8) puja pandals during the festival of Kali Puja on 05.11.2018 as mutually agreed and organized by the opposite party no. 2 herein thereby committing criminal breach of trust and causing wrongful loss to the opposite party no. 2 herein to

the tune of Rs. 42 lacs, and moreover the petitioner even threatened to defame and criminally intimidate the opposite party no. 2 herein.

3. On the basis of such complaint, Narkeldanga Police Station started investigation and during the course of investigation the investigating officer made a prayer to the ACJM Sealdah for adding Section 420 of the IPC to the original charge which was added vide Order dated 27.05.2019 on the basis of a “local petition”. Eventually the investigating agency after purported investigation filed a Charge sheet being no. 352 of 2023 under Sections 406/420/120B/506 of the IPC against the petitioner and the other co-accused.

Argument Advanced:-

4. Ld. Senior Counsel, Mr. Ayan Bhattacharjee, appearing on behalf of the petitioner has mainly canvassed his argument on the ground that the allegations leveled in the impugned FIR would make it evident that a pure civil dispute was given the cloak of criminality. Mr. Bhattacharjee further added that a mere failure to appear in the Puja Pandal as a guest cannot make out an offence of cheating as the quintessential ingredient of Section 420 of the IPC is initial deception and

mere non-appearance before a Puja Pandal cannot infer initial deception.

5. Before parting with, Mr. Bhattacharjee has further submitted that if a dispute between the parties is essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance then the same would not constitute an offence of cheating.
6. In support of his contention, Mr. Bhattacharjee has relied on the following cases:-
 - ***Raj Kapoor & Ors. Vs. State & Ors.*** reported in **(1980) 1 SCC 43**
 - ***All Cargo Movers (India) Private Limited Vs. Dhanesh Badarmal Jain & Anr.*** reported in **(2007) 14 SCC 776**
 - ***Alpic Finance Ltd Vs. P. Sadasivan & Anr.*** reported in **(2001) 3 SCC 513**
 - ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr.*** reported in **(2009) 14 SCC 696**
 - ***Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.*** reported in **AIR 2008 C 251**

- ***Mahmood Ali & Ors. Vs. State of Uttar Pradesh & Ors.***
reported in ***(2023) 10 SCALE 523***
- ***Lalit Chaturvedi and Ors. v. State of Uttar Pradesh 5 and Anr*** reported in ***(2024) SCC Online SC 171***
- ***Uma Shankar Gopalika Vs. State of Bihar & Anr***
reported in ***(2005) 10 SCC 336***
- ***Satishchandra Ratanlal Shah Vs. State of Gujarat & Anr.,*** reported in ***(2019) 9 SCC 148***
- ***Motilal Chakravarty Vs. The King,*** reported in ***A.I.R. (36) 1949 Calcutta 586***
- ***Joseph Salvaraj A. v. State of Gujarat and Others.***
reported in ***(2011) 7 SCC 59***

7. Mr. Bhattacharjee by relying on the above mentioned judgments has tried to take support of the following observations of the Court made therein, which are to the effect that :-

- Mere technicality cannot stand in the way of exercise of power under Section 482 of the Cr.P.C.

- If the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence then Court should exercise inherent power. For the said purpose, Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings.
- Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor.
- For exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice.
- Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available

in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

- Further, the observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail. The Hon'ble Apex Court in ***Maneka Sanjay Gandhi v. Rani Jethmalani*** held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption. Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear

through their pleader. While provisions of the Code are considered to be exhaustive, cases arise where the Code is silent and the court has to make such order as the ends of justice require. In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law.

- Provisions of Oaths Act do not and cannot apply in case of filing an application under Section 438 Cr.P.C. The Oaths Act applies for giving evidence before any court including a criminal court which has been explained by the Supreme Court in ***Laxmipat Choraria's Case*** (supra) Section 4(2) of the Oaths Act, 1969 provides that 'nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

- 8.** Per contra, Ld. Senior Counsel, Mr. Sourav Chatterjee, appearing on behalf of the opposite party no. 2 with regard to the maintainability of the instant application has submitted that the revision application which has been affirmed by the petitioner who is an accused in the subject criminal proceeding is not legally sustainable in view of the embargo as laid down under Section 4 (2) of the Oaths Act.
- 9.** Mr. Chatterjee has further contended that the civil suit being no. 694 of 2019 before the Hon'ble High Court Bombay cannot come in the way of continuation of the instant criminal case as it is admitted position of law that in the given set of circumstances both civil and criminal cases can run concurrently.
- 10.** Mr. Chatterjee has further submitted that the facts narrated in the FIR, charge sheet and materials collected during investigation substantially makes out prima facie case against the petitioner for the alleged offences and therefore there is no requirement to abruptly interfere with the proceeding at the very threshold by invoking jurisdiction under Section 482 of the Cr.P.C.

11. Therefore, Mr. Chatterjee has tried to make this Court understand that the petitioner has failed to show that further continuance of the proceeding is not maintainable/permitted in view of any expressed legal bar or that the facts delineated in the FIR and charge sheet does not satisfy the ingredients of any offence punishable under the law of the land and within established legal framework.

12. In order to substantiate his argument, Mr. Chatterjee has relied on the following cases:-

- ***Susanta Kumar Pal Vs State of WB (2023)*** reported in ***SCC OnLine Cal 482***
- ***K. Neelaveni Vs. State (2010)*** reported in ***11 SCC 607***
- ***Mary Pushpam Vs. Telvi Curusumary and Ors.*** reported in ***(2024) 3 SCC 224***
- ***Kaptan Singh Vs. State of U.P.*** reported in ***(2021) 9 SCC 35***
- ***State of M.P. Vs. Yogendra Singh Jadon*** reported in ***(2020) 12 SCC 588***
- ***Kamal Shivaji Pokarnekar Vs. State of Maharashtra,*** reported in ***(2019) 14 SCC 350***
- ***CBI Vs. Arvind Khanna*** reported in ***(2019) 10 SCC 686***

- ***Jindal India Limited Vs. State of WB-SLP [(Cri.) 005779-005780/2023]***
- ***Sukumar Roy Vs. State of West Bengal*** reported in ***(2024) SCC OnLine Cal 1929***
- ***Sk. Sultan Ahamed and Ors. Vs. State of West Bengal and Anr.*** reported in ***(2023) SCC OnLine (Cal) 5359***
- ***State of Orissa Vs. Debendra Nath Padhi [Special Bench]***, reported in ***(2005) 1 SCC 568***
- ***State of M.P. Vs. Awadh Kishore Gupta*** reported in ***(2004) SCC 691***
- ***Priti Saraf and Another VS State of NCT of Delhi-*** reported in ***(2021) 16 SCC 142***
- ***Kaptan Singh VS State of Uttar Pradesh & Ors.*** reported in ***(2021) 9 SCC 35***
- ***Amit Kapoor VS. Ramesh Chander*** reported in ***(2012) 9 SCC 460 Indian Oil Corporation VS NEPC India Ltd & Ors.*** reported in ***(2006) 6 SCC 736***
- ***Royal Medical Trust vs.*** reported in ***UOI (2017)16 SCC 605***
- ***Union of India vs. Dhanwanti Devi*** reported in ***(1996)6 SCC 44***

13. Through the above referred cases Mr. Chatterjee has tried to take assistance of the following ratios in order to further substantiate his argument:-

- While quashing a criminal proceeding the High Court cannot enter into the merits of the allegation.
- Exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.
- While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot

appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

- When the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved.
- The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. Whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising

inherent powers of the High Court under Section 482 CrPC for quashing such proceedings.

- It is well settled in law that the ratio of a decision has to be understood regard being had to its context and factual exposition. The ratiocination in an authority is basically founded on the interpretation of the statutory provision. If it is based on a particular fact or the decision of the Court is guided by specific nature of the case, it will not amount to the ratio of the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found.

14. Ld. Counsel, Mr. Madhusudan Sur, appearing on behalf of the State has contended that there is sufficient material collected during investigation to prima facie establish a case against the petitioner and thereby duly submits that the prayer of the petitioner for quashment of impugned FIR is not legally justified.

Analysis:-

15. Before delving deep into the merit of this case, I would like to discuss the general and consistent law laid down by the Hon'ble Apex Court in exercising extra ordinary jurisdiction under Section 482 of the Cr.P.C. In a number of celebrated judgements the Hon'ble Apex Court has handed down some vital elements which are as follows:-

- The inherent power of High Court under Section 482 of Cr.P.C for quashing has to be exercised sparingly with circumspection and in the rarest of rare cases.
- Exercise of inherent power under Section 482 of Code of Criminal Procedure (for short Cr.P.C) is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely be ended in acquittal.

16. The High Court in exercise of it's jurisdiction under Section 482 of Cr.P.C does not function either as a Court of

appeal or revision, also having no power to conduct a mini trial and only the power which can be exercised is namely,

- a) to give effect to an order under the Cr.P.C,
- b) to prevent abuse of the process of the Court, and
- c) to otherwise secure the ends of justice.

17. At the stage of discharge and /or while exercising the power under Section 482 of the CrPC, the Court has a very limited jurisdiction and is only required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”. In addition to that the Hon’ble Apex Court has also held that at the **initiation of the Criminal Proceedings, whether the criminal proceedings are malicious or not, is not required to be considered at the stage of quashing as it is required to be considered only at the conclusion of the Trial.** The only material requirement which is to be considered is a prima facie case and the material collected during investigation, which warrants the accused to be tried.

18. Now coming to the case at hand, a careful perusal of the FIR as well as the materials collected during investigation would suggest that the petitioner who is a cine artist was to

appear as guest at eight (8) Puja Pandals on 5th November, 2018 during Kali Puja. For her appearance the petitioner allegedly collected Rs. 12 lacs from Phoenix Talent Management which is represented by the opposite party no. 2 herein. But, on the said date, the petitioner failed to appear as a guest artist, thereby causing wrongful loss to the complainant/opposite party no. 2 herein to the tune of Rs. 42 lacs and also the petitioner allegedly threatened the complainant with dire consequences whenever the opposite party no. 2 tried to approach the petitioner for his money. Upon receipt of the complaint police started investigation and during the course of investigation police collected a number of documents including the copies of the flight tickets, bank statements against the amount paid to the account of the accused, the bookings made in the name of the accused in a high profile hotel in Kolkata for her scheduled stay during the period of visit. The photocopies of the claims made by the club for non appearance of the petitioner were also collected.

19. Therefore, in common parlance it can easily be assessed that admittedly there was a contractual relationship by and

between the parties for performance in exchange of monetary consideration. So, the **main contentious issue** in this revision application revolves around the sole question that whether a breach of contract can attract criminal prosecution for cheating.

20. It is also pertinent to mention here that opposite party no. 2 herein admittedly filed a civil suit which is presently pending before the City Civil Court, Mumbai. A cumulative reading of the complaint as well as the materials collected during investigation clearly boils down to an admitted position of fact that there was a commercial relationship by and between the parties. The petitioner was to appear as a guest artist for visit to various Puja Pandals. She even obtained the boarding pass to take the flight but whatever be the reason she eventually failed to come as per the contract for which she received an advance amount to the tune of Rs. 12 lacs from M/s. Pheonix Talent Management. But, after her failure to comply with the contract she did not refund the advance amount. This whole course of action, in my opinion, clearly demonstrates an issue of a breach of contract.

21. In this regard, I think it would be profitable to discuss the settled proposition of law enunciated by the Hon'ble Apex Court in a plethora of decisions which is to the effect that A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely an allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the opposite party no. 2 herein approached the petitioner to come as a guest artist. Accordingly, this proposal was accepted by the petitioner but ultimately she committed a breach. This whole course of action, in my humble opinion at best can be termed to be a breach of contract for which admittedly a civil suit is pending. The criminal courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered clearly spells out the commercial nature of relationship by and between the parties therefore allowing the instant criminal

proceeding to continue would be an abuse of process of the Court.

22. Now referring to another important plea raised on behalf of the opposite party no. 2 regarding the fact that the revision application has not been filed in proper form and is affirmed by an unauthorized person in violation of the Oaths Act, Mr. Chatterjee has tried to make this Court understand that the accused is debarred from affirming an affidavit in view of the embargo in terms of Section 4(2) of the Oaths Act. He has further contended that mere compliance of notice under Section 41A of the Cr.P.C. does not establish the fact that the petitioner was personally present before the Notary Public while affirming the affidavit. In support of this contention, Mr. Chatterjee has relied on the case of **Sushanta Kumar Paul** (supra). Per contra, Mr. Bhattacharjee has vehemently denied this argument and has submitted that the petitioner duly appeared before the investigating officer on November 12, 2022 on the same date on which the affidavit was affirmed. In support of this contention, Mr. Bhattacharjee has relied on the affidavit annexed with the written notes of arguments wherein the

petitioner has affirmed her travel to Kolkata with supporting documents. In this regard, Ld. Senior Counsel appearing on behalf of the petitioner has further argued that an authorized representative can perform affirmation of an affidavit on behalf of the principal in connection with a criminal proceeding by relying on **GKW Limited** (supra). Alternatively, even if the contention of the opposite party no. 2 is considered as gospel truth, in my humble opinion, still this issue cannot be said to be a glaring irregularity which can attract dismissal of the entire application.

- 23.** In the aforesaid view of the matter, the instant criminal revision application being no. CRR 4698 of 2022 stands allowed.
- 24.** As a sequel, the impugned FIR being Narkeldanga P.S. Case No. 254 of 2018 dated 27.11.2018 under Sections 406/420/506/120B of the IPC stands quashed.
- 25.** All connected applications, if there be any, stand disposed of accordingly.
- 26.** Interim order, if there be any, stands vacated.
- 27.** Case diary be returned.

- 28.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 29.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]