
(2023) 06 CAL CK 0061

Calcutta High Court (Appellete Side)

Case No: Criminal Revision No. 3188 Of 2015 , CRAN 12 Of 2018, 15 Of 2019 (Old No: CRAN 3467 Of 2018, 3367, 3468, 3368 Of 2019)

State Of West Bengal &
Anr.

APPELLANT

Vs

State Of West Bengal &
Anr.

RESPONDENT

Date of Decision: June 26, 2023

Acts Referred:

Indian Penal Code, 1860 " Section 120B, 406, 415, 420#Code Of Criminal Procedure, 1973
" Section 482#Negotiable Instruments Act, 1881 " Section 138

Citation: (2023) 06 CAL CK 0061

Hon'ble Judges: Rai Chattopadhyay, J

Bench: Single Bench

Advocate: Milon Mukherjee, Sandipan Ganguly, Debangana Bhattacharjee, Amitava Mitra,
Narayan Prasad Agarwala, Pratick Bose

Final Decision: Disposed Of

Judgement

Rai Chattopadhyay, J

1. Both the revisions being CRR 3188 of 2015 and CRR 3189 of 2015 were heard together and are being disposed of by dint of a common judgment,

as herein below.

2. Both the matters have been filed by the following six petitioners:- (i) Satya Brata Ganguly, (ii) Sanjay Chamria, (iii) Sanjay Nayar, (iv) Narayan K.

Seshadri, (v) Nabankar Gupta and (vi) Ms. Janet Gasperchowdhury.

3. They have challenged two criminal proceedings arising out of two separate complaints, filed by two different persons.

4. In CRR 3188 of 2015, the petitioners have challenged proceedings in Case NO. C.S. -0027619 of 2015 (T.R. No. 7037 of 2015), under sections

420/406/120B of the Indian Penal Code, pending before the Metropolitan Magistrate, 18th Court, Calcutta. In CRR 3189 of 2015 the petitioners have

challenged the proceedings in Case No. C.S. -0024674 of 2015 (T.R. No. 6757 of 2015), under Sections 420/406/120B of the Indian Penal Code,

pending before the same Court.

5. One Sri Debasish RoyChowdhury is the complainant in C.S. No. 0027619 of 2015 (related to CRR 3188 of 2015) and Sri Saikat Sen is the

complainant in C.S. No. 0024674 of 2015 (related to CRR 3189 of 2015). Both the complainants have alleged against the present petitioners/accused

persons and the crux thereof may be laid down as herein below:-

6. The petitioner nos. 1 to 5 have been mentioned to be the directors of the company, namely, Magma Fincorp Limited (accused no.1 before the trial

Court). Petitioner no.6 is the Chief People Officer/Vice President, Human Resource (erstwhile). They have been mentioned to be very intricately

involved in the decision making procedure and day to day affairs of the accused no.1 company.

OP no.2/complainant in CRR 3188 of 2015 was appointed as Senior Manager of the company with effect from 25.11.2005. He was subsequently

appointed the Regional Business Head, West Odisha, with effect from 01.12.2005. Later on, vide letter dated 09.06.2007, he was promoted as

General Manager of the company. OP No.2 in CRR 3189 of 2015 was appointed as Associate Vice President in the same company on and from

20.03.2008.

7. The dissension started since the year 2010. The opposite parties in both the cases/complainants, have stated in their respective written complaints

that they had acquired and built up, by 2010, enough efficiency and expertise, to venture for more lucrative, highly paid employment elsewhere, than

the accused company. They say that they would have accepted offer of better jobs, leaving their employment with the accused no.1 company, had not

they been cheated with the false promise to be granted with better perquisites in future, by the accused no.1 company, of which the petitioners are the

office bearers responsible for company's policies and affairs. They say that the company circulated an e-mail offering the following perquisites:-

It was declared in 2010, that all employees of the accused no.1 company including the complainant, who hold the post of Manager and above and who

either

a. Have completed two years of service with the company as on 1st April, 2010 (i.e, has joined the services of the company before 31st March, 2008)

or,

b. Joined the company after 31st March, 2008, would require to complete two years of service and after being so eligible such employee has to serve

the company for a period of three years, such employee/s would be entitled to an one-time payment under the head/nomenclature of "Long Term

Bonus" as per slabs laid down by the company (for the sake of brevity, hereinafter refer to as "LTB").

8. They say that due to the offers of the company in the form of benefit for excellence, as circulated through the e-mail, as described above, they

were restrained to seek for better opportunities anywhere outside the said company and such promise, which eventually turned to be a false one,

compelled them to place faith and reliance in the said declared scheme and policy of the company to be granted to them, as they fulfil the eligibility

criteria as prescribed therein.

9. OP no.2 in CRR 3188 of 2015 have mentioned in the complaint that as per the said scheme declared by the company he was entitled to a monetary

benefit from the company to the tune of Rs. 12,00,000/-, whereas OP no.2 in CRR 3189 of 2015 has stated to be entitled to receive such a financial

benefit from the said company to the tune of Rs.17,00,000/-.

10. Allegedly the accused no.1 company had never intended to comply with the terms of the scheme and the same was merely a camouflage and eye

wash, to hold back the efficient employees like the complainants in the company, in lieu of lesser financial benefits. On the contrary the complainants

were induced to believe in the scheme reasonably, as competent and qualified employees, having complied with the eligibility criteria mentioned

therein. They say that they believed company's decision in good faith but eventually suffered wrongful loss, due to the deceptive and fraudulent

withholding of financial benefits, declared earlier. They also allege that they have been fraudulently induced to yield their labour and expertise, on the

basis of the false promise and some fraudulent scheme declared by the accused company.

11. The events took a different turn when the complainants resigned from their job with the accused no.1 company. OP no.2 in CRR 3188 of 2015

resigned from the company's job with effect from May, 2013 and OP no.2 in CRR 3189 of 2015 had resigned with effect from February, 2014.

12. The complainants say that their demand for financial benefits in terms of the scheme declared by the company as mentioned above was not paid

any heed to and thus they have been subjected by the said company with deception and cheating. Ultimately they took resort in a Court of law by

filing the complaint as aforesaid.

13. While placing the case of the petitioners Id. Sr. Counsel Mr. Mukherjee has stressed specifically on the point that any offer as alleged, if have

been made at all, was contingent in nature, in so far as the benefit was to be awarded only after meeting certain qualifying criteria both in terms of

experience of the incumbent and also in terms of the profit and/or good business of the company. He says that it is only the misconception of the

complainant that they were eligible for any "Long Term Bonus" (LTB) in terms of the company's circular, which the complainants have

mentioned in their respective complaints.

14. Mr. Mukherjee has strongly emphasised that there is no element of an offences under Section 420/406/120B of the Indian Penal Code in the entire

conduct and operation of the petitioners, being the directors of the accused no. 1 company. Mr. Mukherjee emphasises that any proceeding against his

clients would only result into gross abuse of the Court's process and this Court, in exercise of its inherent jurisdiction under Section 482 of the

Cr.P.C may interfere with the same by quashing the entire criminal proceeding against his clients.

15. State is represented though no one has represented the OP no.2.

16. Be that as it may, it is the submission on behalf of the State/OP that since the matter would involve certain disputed questions of fact, which

cannot be gone into by this Court, in exercise of its power under section 482 of the CrPC, the expeditious trial is warranted in these cases.

17. The petitioners, in these cases, have not, however, challenged or denied issuance of a circular, as mentioned above declaring certain financial

benefit to its employees, who would qualify certain criteria. It is also an admitted fact in these cases, that at the relevant point of time of issuance of

such circular and even thereafter, the opposite parties have been in employment with the accused no.1 company. Non-payment of any financial

advances to the complainants, is also a fact which is virtually admitted in these cases. The other questions, that is, whether the complainants have

complied with the requisite criteria or not and also that whether the benefit declared was contingent to certain condition or not are definitely the

questions of fact to which this revision Court would not be eligible to go into. That is only the prerogative of the trial Court which is the fact finding

Court, to consider the evidence of the parties and thereafter determine on due scrutiny of the same, in accordance with the law prescribed "as

regards necessary of the questions of facts, related with these cases.

18. So far as the submission on behalf of the petitioners that there is no element of cheating involved in the conduct of the company by issuing the

circular as above, we need to consider the elements of the offence as enshrined in the statute.

19. Offences under sections 420, 406 and 120B of the Indian Penal Code are contemplated. Section 420 thereof provides for punishment for an

offender who cheats and thereby dishonestly induces to deceive a person to deliver any property. What would constitute cheating has been

enumerated in section 415 of the IPC. Deception of a person and fraudulently and dishonestly inducing him to do anything which he would not do if he

were not so deceived, would make a person guilty of an offence under this section of law. While interpreting these provisions the Courts of the

country have time and again pronounced and settled that failure to keep up the promise would not come within the purview of these provisions.

Fraudulent and dishonest intentions to deceive should be evident from the very inception of the inter se transaction between the parties. For the sake

of clarity of the discussion, one may refer to a judgment of the Hon'ble Supreme Court reported in (2005) 10 SCC 228 [Anil Mahajan vs Bhor

Industries Limited and Another], where the Court has held that from mere failure of a person to keep up promise subsequently, a culpable intention

right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract

and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere

breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the

transaction. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence.

Obviously in this case, as discussed earlier, and to the disadvantage of the petitioners, the written complaint is not that cryptic. Petitioners have

challenged the criminal proceeding against him on the basis of the said complaint. As per the settled law, however, this Court while exercising

jurisdiction under section 482 CrPC would act with caution and circumspection enough, not to obviate a situation when in spite of the complaint having

enumerated the ingredients of the alleged offence with prima facie allegations and materials, the trial may be vitiated. One may refer to the Apex

Court's decision reported in (2019) 9 SCC 677 [Lakshman vs State of Karnataka], where the Court has been pleased to find as follows :

“ 8. *****

In a petition under Section 482 CrPC it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are

factual disputes.

It is fairly well settled that power under Section 482 CrPC is to be exercised sparingly when the case is not made out for the offences alleged on the

reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any schedules were appended to the

agreement or not, a finding is required to be recorded after full-fledged trial. Further, as the contract is for the purpose of procuring the land, as such

the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of

cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or

complaint filed under Section 138 of the NI Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482

CrPC, we are of the view that the High Court also committed an error that there is a novation of the contract in view of the subsequent agreement

entered into on 8-11-2012. Whether there is novation of contract or not and the effect of such entering into the contract is a matter which is required

to be considered only after trial but not at the stage of considering the application under Section 482 CrPC.

As stated earlier, the claim of the petitioners regarding that application of the circular to be based on certain contingencies, which according to them

were not fulfilled to justify complainant's claim to the benefit there under "would be a question, purely of facts. Otherwise the complaints are

elaborate enough to find strong prima facie materials in the same as to the alleged offence. As the Supreme Court again in the case of V. Ravi Kumar

vs State reported in (2019) 14 SCC 568 has held that the High Court would exercise its inherent power under section 482 of the CrPC for quashing

the FIR, in consideration of the facts and circumstances of a particular case and the same would not be warranted where allegations made in the FIR,

would prima facie constitute the offences, as alleged.

20. The employment relationship is the legal link between employers and employees. It exists when a person performs work or service under certain

conditions in return for the remuneration. It is through the employment relationship, however defined, that reciprocal rights and obligations are created

between the employee and the employer. Apart from the written contract of employment the relationship between an employer and its employees, is

based on mutual trust. Trust continues to grow with time. Employees have a fiduciary obligation to act in the best interest of their employer. Likewise,

the employer would be depended for a secured career of a person in his employment, yielding emoluments which would support the living of an

employee and all dependent upon him. People start to think longer term career wise and even sign up for longer projects. The parties in this case had a

mutual bearing of this kind, being employees (complainants) and their employees (accused persons/petitioners). So long the complainants had

advanced their labour to the company, they would naturally accept company's scheme for financial benefit to be genuine and payable to them,

they being eligible employees. The complainants have been able to bring prima facie materials, vide their complainants, that the petitioners had induced

them to render services on the garb of future benefit though had no further acted in terms of their own declaration.

21. It is noticeable that the legislature has not defined the term

"property" in IPC. The term "property" having not be

specifically defined,

no element of restriction could have been placed on it, and the term

“movable property” contemplated under Section 415 IPC would include things in

action and intangible property. The complainant had rendered his services as a quid pro quo for consideration. This by itself would fall under Section

420 IPC. Whether or not his entitlement would depend upon any contingency, is for the company to prove in a Court by providing appropriate

materials.

22. Therefore, the relationship of the complaints, till the date they were in service with the accused no. 1 company being that of trust and inter

dependent, one cannot rule out existence of the elements of the offence of cheating and the other offences as alleged against the accused persons

including the present petitioners, till the factual questions involved in these cases are determined by the trial Court. Therefore in my considered opinion

it is not proper to weed out at the threshold the element of the offence as alleged against the petitioners, as it is submitted on behalf of them.

23. Instead it is found that the basic ingredients of the offence as alleged against the petitioner having been put forth in the complaints as mentioned

above, there is no scope for this Court in exercise of jurisdiction under Section 482 of the Cr.P.C, to quash the said complaints. Contrarily an

expeditious trial is the call of the hour, in this case. Hence, the present revision cases CRR 3188 of 2015 and CRR 3189 of 2015, merit no success.

24. CRR 3188 of 2015 and CRR 3189 of 2015 are dismissed. The trial Court in consideration of the span of time already elapsed since after filing of

the complaints, shall exercise utmost expedition in proceeding with the trial of the cases and deliver judgment(s) at the earliest, without granting any

unnecessary adjournment to any of the parties. It is however, made clear that none of the discussions or findings in this judgment, which are only for

the purpose of disposing of these cases under Section 482 Cr.P.C, would bear any relevance to the proceedings, in the trial, to be conducted by the

Magistrate. Trial of the abovementioned cases, before the Magistrate, would proceed untrammelled by any observation or finding, in this judgment.

25. CRR 3188 of 2015 with CRAN 12 of 2018 (Old No: CRAN 3467 of 2018) with CRAN 15 of 2019 (Old No: CRAN 3367 of 2019) and CRR 3189

of 2015 with CRAN 12 of 2018 (Old No: CRAN 3468 of 2018) with CRAN 15 of 2019 (Old No: CRAN 3368 of 2019) are disposed of.

26. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.