

Ashok Kumar Das & Ors Vs State Of West Bengal & Anr

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 10, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 482
Indian Penal Code, 1860 â€” Section 34, 323, 354, 380, 415, 406, 420, 509

Hon'ble Judges: Shampa Dutt (Paul), J

Bench: Single Bench

Advocate: Sabir Ahmed, Indrajit Chatterjee, Dhiman Banerjee, Quazi Ezaz Ahmed, Debashis Mondal, Anasuya Sinha, Snigdha Saha, Pawan Kr. Gupta, Abhimanyu Banerjee, Sofia Nesar, Santanu Sett

Final Decision: Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revisional application has been preferred praying for quashing of the proceedings in G.R. Case No. 297 of 2022 arising out of Taltala

P.S. Case No. 38 of 2022 dated 03.04.2022 under Sections 380/323/354/509/34 of the Indian Penal Code.

2. On hearing the learned counsel for both the parties, it appears that the petitioners and the de facto complainant are related to each other. It is

further submitted by the learned counsel for the petitioners that the property in question has been transferred in favour of the petitioners herein by his

grandmother, who was the absolute owner of the said property.

3. The de facto complainant claims that she was in possession of part of the property and has been forcibly dispossessed from the said property. The

de facto complainant further claims that she has right in the said property.

4. It appears from the written complaint that on the date and time of the alleged incident, the de facto complainant was not at the disputed property.

She was staying at her matrimonial home. It is further stated that subsequently when she visited the disputed property, she was allegedly abused in

filthy language and, as such, the present case has been filed.

5. The Hon'ble Supreme Court in Lalit Chaturvedi vs. State of U.P, Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of

2023):

5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money

or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however,

are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed

by the appellants under Section 482 of the Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This

ground and reason is also not valid.

6. In *Mohammed Ibrahim v. State of Bihar*, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said

section, the following ingredients are to be satisfied:

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of cheating are as

follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce

that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly

induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable

security).

7. Similar elucidation by this Court in *V.Y. Jose v. State of Gujarat*, explicitly states that, a contractual dispute, or breach of contract per se

should not lead to initiation of a criminal proceeding. The ingredient of cheating, as defined under Section 415 of the IPC, is existence of a fraudulent or

dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the

averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction

under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not

undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and

criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made

out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in *Hira Lal Hari Lal Bhagwati v. CBI*, *Indian Oil*

Corporation v. NEPC India Ltd., *Vir Prakash Sharma v. Anil Kumar Agarwal* and *All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain*.

10. The charge sheet also refers to Section 406 of the IPC, but without pointing out how the ingredients of said section are satisfied. No details and particulars

are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust

simultaneously. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there

must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case

entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The chargesheet does refer to Section 506 of the IPC relying upon the averments

in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and

particulars, it is apparent to us, that these allegations of threats etc. have been made only with an intent to activate police machinery for recovery of money.

11. It is for the respondent no. 2/complainant *Sanjay Garg* to file a civil suit. Initiation of the criminal process for oblique purposes, is bad in law and

amounts to abuse of process of law.

6. From the materials on record including the case diary, it appears that the dispute between the parties relates to a family property. The case of the

de facto complainant being in possession of a part of the disputed property, is subject to adjudication by a competent Civil Court. In case the de facto

complainant apprehended such forceful dispossession as alleged she was at liberty to approach a competent Civil Court for protection.

7. The dispute between the parties being a family property dispute is clearly civil in nature and this Court finds no materials on record against the

petitioners for the offences alleged and as such the proceeding in this case is liable to be quashed in the interest of Justice.

8. CRR 2237 of 2023 is thus allowed.

9. The proceedings in G.R. Case No. 297 of 2022 arising out of Taltala P.S. Case No. 38 of 2022 dated 03.04.2022 under Sections

380/323/354/509/34 of the Indian Penal Code, is hereby quashed in respect of the petitioners namely Ashok Kumar Das, Anita Das, Poushali Das,

Piyali Majumder and Abhijit Majumder.

10. All connected applications, if any, stand disposed of.

11. Interim order, if any, stands vacated.

12. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

13. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.