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**(1999) 04 CAL CK 0054**

**Calcutta High Court**

**Case No:** C.R.R. No"s. 1883 of 1997 and 2689 of 1998

Jiwanmal Dugar and Another

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision:** April 16, 1999

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 34, 420, 422

**Citation:** (1999) CriLJ 4487

**Hon'ble Judges:** D.P. Sarkar-II, J

**Bench:** Single Bench

**Advocate:** Subrata Bose, R.L. Joshi and Gobinda Chowdhury, for the Appellant; Sanjay Ranjan Pal, S.N.S. Alkadri and R.K. Ghoshal, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

D.P. Sarkar-II, J.

This an application u/s 482, Cr.P.C. with the prayer for quashing the G.R. Case 671 of 1995, In which the learned Judicial Magistrate, 3rd Court Krishnagar, Nadia took cognizance on the basis of the chargesheet filed by the police after investigation u/s 420/34/120B, I.P.C. Out of the particular G.R. Case two revisional applications have been filed, namely, C.R.R. 1883 of 1997 and the other is C.R.R. 2689 of 1998. Both the cases were heard in part long back and on the prayer of the de facto complainant they were adjourned.

2. The learned senior Advocate appearing on behalf of the de facto complainant, namely, Mr. Milan Mukherjee on last Tuesday, on being enquired of by this Court agreed to complete the hearing of this particular case. Today when the matter is taken up, the learned Advocate for the petitioner is present and the junior of Mr. Mukherjee is present but he prays for short adjournment. As the matter is pending

for a long in a part heard state and after hearing the arguments placed by the learned Advocate for the petitioner as well as by the senior Mr. Mukherjee appearing for the private opposite party in part on the other day, I virtually find no justification to carry on with this particular matter for any indefinite period. Therefore the prayer for short adjournment as made by the learned Advocate Junior to Mr. Mukherjee cannot be conceded to and the matter is taken up for final decision. The learned senior Advocate Mr. Bose appearing for the petitioner has recompleted his submissions to draw up a clear picture of the facts and circumstances involved in this matter.

3. The facts in this case in short are as follows :-

The private opposite (party) Sri Bhabananda Sahay and the present petitioner were in business terms in respect of raw jutes for more than ten years and in the past there was no such trouble between the parties. The private opposite party used to collect jutes from the growers and the middlemen and then used to supply the same to the petitioner company and the petitioner company used to issue "Rukkas" on production of these, according to the business practice, the price of jute supplied, used to be paid by the petitioner to the private opposite party Shri Bhabanand Saha. The said Sri Saha supplied during the period from 1985 till 1992 raw jute to the petitioner companies under the same management worth about Rs. 9,94,515.05. It is an admitted fact that by 25-4-1995 Sri Bhabanand Saha received a sum of Rs. 6,24,000.00 out of the total value of jute supplied till 30th April, 1994 to Raj and Company. Naturally an amount of rupees two lakhs and odd were due from the petitioners. But the petitioners could not pay that amount as the agent of Titagarh Jute Mill through whom the petitioners used to supply the jutes to the mills also stopped payment of rupees twenty nine lakhs and odds. The Rukkas as such were issued in favour of Bhabanand Saha, could not be honoured by the petitioners, which fact of non-payment promoted Sri Bhabanand Saha to file the aforesaid G.R. Case. At first the I.O. of the case submitted the chargesheet u/s 422, I.P.C. making the observation that it was a breach of business contract, but the learned S.D.J.M. issued a notice to the other side as to why the chargesheet should not be accepted, that order was there with the order sheet, while the said Magistrate was transferred from the station and his successor overlooking the particular order and on perusal of the chargesheet and the C.D. directed for reinvestigation and after fresh investigation the police submitted the present chargesheet u/s 420/34/120B, I.P.C.

4. The learned Judicial Magistrate on the basis of this chargesheet issued a warrant of arrest and the son of the accused No. 1 was arrested by the police and taken into custody, of course he was released on bail granted by this Court.

5. In the present two revisional cases the petitioners have challenged the very basis of the chargesheet alleging that the facts and circumstances of the case involved do not constitute any offence rather it constitutes a case of civil liability for breach of commercial contract between the petitioners and the private opposite party namely,

Bhabanand Saha.

6. The essential ingredient of the offence u/s 420, I.P.C. is the existence of dishonest intention to cheat from the very beginning of the transaction. This essential ingredient is lacking in the present case as it remains undisputed that Bhabanand Saha received payment during the interim period even after the filing of the petition. Such subsequent payments in part in the context of previous commercial transactions between the parties make it clear that hardly there was any dishonest intention on the part of the petitioner to misappropriate the money due to Bhabanand Saha or to cheat him thereby. It is not unusual that in course of business there may be period of depreciation and the cause of non-payment but such depreciation cannot constitute an offence under the Penal Code.

7. That apart my attention is drawn to the fact that said Bhabanand Saha and the petitioner entered into an agreement not to proceed with the criminal case and to file necessary application before the Court concerned for withdrawal. As it is a State case the power of withdrawal does not lie with the de facto complainant rather it lies to the P.P. in charge of the case. Therefore the prayer for withdrawal of course could not be allowed under the law. But the offence u/s 420, I.P.C. is compoundable by the persons alleged to have been cheated and such application as filed by Bhabanand Saha could have been treated as an application for compounding the offence and the Magistrate could pass such an order. Whatever it may be, when from the facts and circumstances of the case and the conduct of the parties it is clear that no offence u/s 420/34/120B, I.P.C. has been constituted and the allegations contained with the F.I.R. disclose a case of civil liability, the G.R. case in question namely, 671 of 1995 is not maintainable in law and liable to be quashed, as prayed for. Accordingly the said G.R. case and the connected criminal proceeding before the learned Judicial Magistrate be quashed hereby u/s 482, Cr.P.C. and the petitioners be discharged from any sort of criminal liability connected with this case and if on bail, from the bail bonds too.

8. The C.R.R. 1893 of 1997 is hereby allowed and this particular judgment and order shall also govern the fate of the Criminal Revision No. 2689 of 1998.

9. If applied for; urgent xerox certified copy of the order shall be supplied expeditiously from the date of filing the requisites.