

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 28 of 2023

M/S. THE WESMAN ENGINEERING CO. PRIVATE LIMITED & ORS.

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Anand Keshari,
Mr. Debojyoti Das.

For the State : None.

For the Opposite Party No.2 : None.

Hearing concluded on : 17.12.2024

Judgment on : 07.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceeding being Complaint Case No.CNS 3902 of 2022 being T.R. case no.2436 of 2022 under Sections 420, 406 and 120B of the Indian Penal Code, 1860 pending before the learned Metropolitan Magistrate, 19th Court, Calcutta.
2. The petitioners' case is that they are the directors and other key personnel in M/s. The Wesman Engineering Co. Private Limited which is a renowned corporate entity that utilizes industrial heating, thermal solutions, heat treatment and foundry process.
3. **The case as made out against the petitioners herein in the petition of complaint by the complainant is as follows :-**

"1. The Complainant is a Partnership Firm, having his place of Business at C/o. Sk. Asraf Ali, 167/3-D, Lenin Sarani, Chandni Chowk Market, Gate No.5, Ground Floor, Kolkata – 700 072.

.....2. the complainant states that during the course of business, the accused nos.2 to 7 approached the Complainant in its business office in the address mentioned in the cause title hereinabove and introduced themselves as the Managing Director / Directors & Principal Officers of M/s. The Wesman Engineering Co. Private Limited, the Accused No.1, thereby holding out that theirs is a large scale concern dealing nationwide. After such inducement the Accused nos.2 to 7 asked the complainant to supply wooden packaging materials and dispatch the said products by making invoice in the name of M/s.

Wesman Engineering Co. Private Limited, the Accused No.1, thereby assuring the complainant timely and prompt payment.”

4. It is further stated in the petition of complaint that :-

“5....upon such inducement and bonafide belief that the accused nos.2 to 7 are persons of repute and so are the Managing Director / Directors & Principal Officers of M/s. The Wesman Engineering Co. Private Limited, the Accused No.1, placed Purchase Orders upon the Complainant and the Complainant between 30th December, 2017 to 10th July, 2018 supplied to the Accused huge quantities of Wooden Packaging Materials amounting to Rs.16,74,335/ (Rupees Sixteen Lakh Seventy Four Thousand Three Hundred Thirty Five Only) and the said supply was duly received by the Accused without raising any demur or protest as to its quality or quantity and the invoices raised by the Complainant were also received by the Accused without any protest as to amount of the said products. Upon receipt of the goods and tax invoices, the Accused have also claimed and taken the “Input Tax Benefits” of GST in their GSTIN – 19AABCT0809Q1ZX.

6. That after accepting the said supplied products along with the Invoices, the Accused failed and / or ignored to pay the entire amount to the Complainant but as and when the Complainant disclosed his desires to take legal proceedings against the Accused, the Accused became afraid and to gain the faith of the Complainant and to avoid legal proceedings, the Accused released Rs.13,06,140/- and sought some more time to release the rest of the dues. Thereafter, the Accused intentionally avoided the Complainant in making payment of the remaining dues amount of Rs.3,68,195/-, which shows that the intention of the Accused have been to obtain the supply of Wooden Packaging Materials and to leave the amount as outstanding. Whenever the Complainant approached

the Accused at the office of the accused firm as stated in the cause title above to clear the due payment pertaining to the said transaction, the Accused willingly absented themselves from coming face to face with the Complainant and through the staff members of the accused firm postponed the payment of the Invoiced amount upon several pretext and gave false assurance of making the payment soon to the Complainant.”

5. The learned Magistrate examined one witness while conducting an enquiry as required under Section 202 of Cr.P.C. and relying upon the judgment of the Supreme Court in the case of ***Vijay Dhanuka & Ors. Vs. Najima Mamtaj & Ors. Reported in (2014) 14 SCC 638*** and considering the materials on record, proceeded to issue process against the accused persons.

6. 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.”

7. It appears that the present case has been filed for the outstanding dues of Rs.3,68,195/- which appears to be allegedly **due out of the said business transaction. There is no written agreement between the parties but the business transaction is admitted by the complainant.**
8. **The case of the petitioner is that the goods received were damaged and as such there is a dispute as to the outstanding payment as alleged by the complainant.**
9. The dispute is thus prima facie civil in nature arising out of a business transaction. There, prima facie does not appear to be any criminal intent on the part of the petitioners herein.
10. **CRR 28 of 2023 is thus allowed.**
11. The proceeding in Complaint Case No.CNS 3902 of 2022 being T.R. case no.2436 of 2022 under Sections 420, 406 and 120B of the Indian Penal Code, 1860 pending before the learned Metropolitan Magistrate, 19th Court, Calcutta, **is hereby quashed in respect of the petitioners namely M/s The**

Wesman Engineering Co. Pvt. Ltd., Mr. Anil Vaswani, Mr. Rajan Arjan Vaswani, Ms. Monica Vaswani, Mr. Nikhil Vaswani and Mr. Arun Punwani.

12. All connected application, if any, stands disposed of.
13. Interim order, if any, stands vacated.
14. Let a copy of the Judgment be sent to the learned trial court at once.
15. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]