

**IN THE HIGH COURT AT CALCUTTA**

**CIRCUIT BENCH AT JALPAIGURI**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Ajoy Kumar Mukherjee**

**CRR 279 of 2022**

**Girish Lahoti & Anr**

**Vs.**

**Firdous Alam**

For the Petitioner : Mr. Anirban Banerjee

Heard on : 02.05.2023

Judgment on : 08.05.2023

**Ajoy Kumar Mukherjee, J.:**

1. This is an application under section 482 of the code of Criminal procedure praying quashing of proceeding of CR. Case No. 114 of 2021 under Sections 484/406/34 of the Indian Penal Code (IPC), presently pending before learned Judicial Magistrate, 2<sup>nd</sup> Court, Cooch Behar at Dinhata. Petitioner contended that petitioner no. 1 is a business man and the petitioner no. 2 and other accused persons, named in the complaint petition are his employees and the opposite party herein admittedly had a business relationship with the petitioner no. 1 for a long time.

**2.** Before filing the present complain, on 02.04.2018 the opposite party filed another complaint before the learned Additional Chief Judicial Magistrate, Dinhata which was registered as C.R. Case No. 61 of 2018, alleging that on 19.02.2017 the petitioner no. 1 purchased jute from the opposite party amounting to Rs. 9,25,000/- and subsequently the petitioner no.1 refused to pay the said amount to the opposite party.

**3.** Learned Counsel appearing on behalf of the petitioner submits that the opposite party never owed any amount of money to the petitioner no. 1 and the allegations which are leveled against the petitioners are completely frivolous and baseless . He further submits that whatever disputes which were existing between the parties, have been amicably settled and the opposite party voluntarily not pressed the aforesaid earlier complainant case being CR. Case No. 61 of 2018 before the concerned Magistrate and as such the said complaint case was dismissed for non-prosecution.

**4.** After a span of more than one and half year of the aforesaid dismissal order, the opposite party filed present complaint before the learned Additional Chief Judicial Magistrate, Dinhata on the self same cause of action, which is registered as C.R. Case No. 114 of 2021. In the present complaint also the same complainant stated that he owed Rs. 9,25,000/- from the petitioner herein due to business transaction and out of said outstanding amount Rs. 9,25,000/-, the petitioner no.1 had paid Rs. 5,00,000/- to the opposite party and for which the opposite party not pressed earlier complaint being CR. Case No. 61 of 2018 and subsequently when the opposite party demanded the rest amount, the petitioner refused to pay the same.

**5.** Mr. Anirban Banerjee, learned Counsel appearing on behalf of the petitioner submits that even if the allegations as demonstrated in the complaint are taken at their face value and accepted in their entirety, it does not prima facie constitute any offence or make out any case against the petitioner and allegations are so absurd and inherently improbable that on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioners. In fact the purported proceeding has been instituted to misuse and abuse the process of law. The allegations leveled against the petitioners are without any basis and do not form any case against the petitioners. He further submits that in such circumstances, putting petitioners to a trial would be travesty of justice. He further submits entire complain is motivated by malice and *malafide* and has no basis in reality whatsoever and as such prayed that the present proceeding be quashed.

**6.** I have gone through the contents of the earlier written complaint filed in C.R. Case No. 61 of 2018 wherein it has been stated by the opposite party that he had sold jute to the petitioner herein valued at Rs. 9,25,000/- and goods were delivered to the petitioner but after getting delivery the petitioners herein refused to make payment and when the opposite party demanded the said amount the opposite party herein had threatened with dire consequences. Said complaint was filed on 02.04.2018. It further appears that the Magistrate by its order dated 19.11.2019 was pleased to dismiss the said complaint case on the ground of non prosecution.

**7.** In the present complaint the allegations leveled against the opposite party is the same that the petitioners have cheated him by not paying the

price of the jute which he sold to the petitioner. However, in this complaint he admitted that earlier he has initiated C.R. Case No. 61 of 2018 and after initiation of that proceeding the petitioners/accused paid Rs. 5,00,000/- and took time to make the rest payment and on believing such words he had withdrawn the earlier proceeding, but the petitioner herein subsequently refused to make the rest payment for which he had lodged the present complaint.

**8.** Someone's inability to pay a portion of the price of goods purchased by him cannot give rise to a criminal prosecution or criminal breach of trust or cheating unless fraudulent and dishonest intention is shown right from the beginning of the transaction, as *mens rea* is the crux of the offence. In the present case contents of the complaint even if taken to be true that the petitioner had purchased jute from the opposite party no. 2 for an amount of Rs.9,25,000/- out of which he has only paid Rs. 5,00,000/- and refused to pay the rest amount, no dishonest representation or inducement could be found or inferred right from the beginning, since according to complaint the petitioner has paid Rs. 5,00,000/- out of total outstanding amount Rs. 9,25,000/-. So it cannot be said that right from the beginning of the transaction, the petitioner had any fraudulent or dishonest intention i.e. the *mens rea*. Apex Court has cautioned in number of cases against criminalizing civil disputes such as breach of contractual obligation. The legislature intend to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements.

**9.** In the above circumstances I find that the continuation of the present proceeding pending against the present petitioners will be sheer abuse of the

process of court in view of the fact that there is remote chance of convicting present petitioners either under section 420 or under section 406 of IPC, on the basis of the materials available in the record and I find reason to invoke the inherent power under section 482 of the code of Criminal Procedure to quash the present proceeding.

**10.** Accordingly CRR 279 of 2022 is allowed. The proceeding being CR. Case No. 114 of 2021 under sections 420/406/34 of the IPC pending before the learned Judicial Magistrate 2<sup>nd</sup> Court at Dinahata, Cooch Behar is hereby quashed.

**11.** Urgent certified copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Ajoy Kumar Mukherjee, J.)**