

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

Justice Bibhas Ranjan De

C.R.R. 2234 of 2015

IA NO: CRAN 2 of 2016 (Old No: CRAN 3994 of 2016)

Keya Talukdar & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners :Mr. Sourav Chatterjee, Adv.
Mr. Pratim Chatterjee, Adv.
Mr. Shyamal Kumar Das, Adv.

For the opposite party :Mr. Sauradeep Dutta, Adv.

For the State :Mr. Shekhar Barman, Adv.

Heard on :05.10.2023, 30.11.2023,
22.01.2024, 30.01.2024,
23.04.2024

Judgment on : 10.05.2024

Bibhas Ranjan De, J.

1. The petitioners have preferred the instant revisional application, inter alia praying for quashing of proceedings in connection with G.R. Case No. 3 of 2015 pending before the Ld. Additional Chief Judicial Magistrate (for short ACJM), 2nd Court, Kalyani, Nadia arising out of Chakdaha Police Station Case No. 838/ 2014 dated 30.12.2014 under Sections 420/406/34 of the Indian Penal Code (for short IPC).

Gist of the Case:-

2. The facts of the case, in laconic, is that on 30.12.2014 the opposite party no. 2 lodged a written complaint against the petitioners to the effect that his youngest daughter and one Durbadal Talukder (since deceased) was about to get married and the date for the marriage ceremony was fixed on 29.01.2015 on mutual consent of both the families and in presence of the alleged persons. The opposite party no. 2 arranged bridal gifts including paying advance for furniture, arranging for jewellerys, TV, Fridge, Clothing etc. and also made arrangements for pandals, lights, Municipal water etc. for the occasion. Moreover, he even printed the marriage cards and distributed the same to his friends and relatives but later on, all of a sudden the opposite party no. 2 got an information

from the middle man that the alleged persons/ petitioners would not continue with the proceedings of marriage and thereby cancelled the same which resulted in the opposite party no. 2 incurring losses of Rs. 1,45,000/-. In spite of that, the opposite party no. 2 along with some relatives went to the house of groom to get a real idea about the truth but the petitioners showcased rude gestures and informed him that the said marriage would not take place under any circumstances. Although, opposite party no. 2 made several requests, prayers but petitioners did not pay any heed. After realizing that the petitioners cheated the opposite party no. 2 through their pre-meditated activities which resulted in him losing his life earned money and also their family respect, the opposite party no. 2 made this written complaint.

- 3.** On receipt of the said written complaint Chakdaha Police Station Case No. 838/ 2014 dated 30.12.2014 under Sections 420/406/34 of the IPC was registered against the petitioners. Upon completion of investigation charge sheet dated 23.03.2015 under Sections 420/406/34 of the IPC was submitted against the petitioners.
- 4.** The said charge sheet was filed before Ld. ACJM, Kalyani, Nadia and the Ld. Magistrate was pleased to take cognizance

of the same vide order dated 29.03.2015 against the petitioners. The instant case was then transferred to the Court of Ld. ACJM, 2nd Court, Kalyani for disposal.

Argument Advanced:-

5. Ld. Counsel, Mr. Sourav Chatterjee, appearing on behalf of the petitioners has contended that the FIR in connection with this case did not disclose any offence under Section 420/406 of the IPC.
6. Mr. Chatterjee has specifically contended that neither any inducement was caused to deliver any property to the petitioners leading to wrongful loss to the opposite party no. 2 or wrongful gain to the petitioners to attract the provision of Section 420 of the IPC.
7. Mr. Chatterjee has further submitted that the contents of FIR never disclosed anything about entrustment of any property with the petitioners.
8. Before concluding his argument Mr. Chatterjee has submitted that bride-groom/ petitioner no. 4 herein died on 25.09.2015 and his name was expunged from the cause title of revision application vide order dated 11.03.2024.

9. In support of his contention, Mr. Chatterjee has relied on a case of ***Kalyan Kumar Das Vs. State of West Bengal and another*** reported in ***2023 SCC OnLine Cal 1190***.

10. Ld. Counsel, Mr. Sauradeep Dutta appearing on behalf of the opposite party no. 2 heavily relied on the provision of Section 415 of the IPC and tried to make this Court understand that the definition of cheating concluded with the following sentence-

“ ... or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if you were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘cheat’.”

11. Thereby, Mr. Dutta has submitted that FIR discloses an offence under Section 420 of the IPC in terms of definition of cheating codified in Section 415 IPC.

12. In order to further substantiate his argument, Mr. Dutta has relied on the following cases:-

- ***S.M. Datta Vs. State of Gujarat and another reported in (2001) 7 SCC 659***

- ***Sujoy Tushar Saha and anr. Vs. The State of Maharashtra and Anr. in connection with Criminal Application no. 703 of 2013***
- ***Sujoy Tushar Saha Vs. The State of Maharashtra and Anr. in connection with Criminal Appeal No. 686 of 2016 (Arising from SLP (Crl.) No. 8763/2014***

13. Ld. Counsel, Mr. Shekhar Barman, appearing on behalf of the State also harped on the same string by submitting that FIR discloses the offence punishable under Section 415 of the IPC. He relied on the evidence collected during investigation.

Ratio of the cases relied on behalf of the parties:-

14. In the case of ***Kalyan Kumar Das*** (supra), which has been relied on behalf of the petitioners, the Co-ordinate Bench of this Court dealt with a matter where the allegation was that the petitioner cheated the opposite party no. 2 and her family and misappropriated the sum amounting to Rs. 50,000/- which was given as dowry in advance unlike our case where no such money or valuables was ever delivered to the family of the petitioners.

15. In ***Sujoy Tushar Saha*** (supra) the Hon'ble Apex Court held that the criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage. However, if

the materials disclosed in the FIR do not disclose an offence, no investigation should normally be permitted.

16. The High Court of Bombay in ***Sujoy Tushar Saha*** (supra) in dealing with same set of facts has held that the complaint discloses ingredients of an offence punishable under Section 420 of the IPC in relation with dispute relating to refusal of marriage and was not liable to be quashed. Being aggrieved, petitioners preferred a Special Leave Petition before the Hon'ble Apex Court wherein the Hon'ble Apex Court did not delve deep into the factual matrix and quashed the same only on the ground of reimbursement of the amount to the opposite party who incurred the expenses for the 'Roka Ceremony'.

Analysis of this Court:-

17. It is not disputed that both the parties mutually agreed to fix the date of marriage on 29.01.2015 and as a sequel the opposite party no. 2 performed all the necessities of her daughter's marriage which resulted in an expense of Rs. 1,45,000/-. Even the marriage invitation card was printed and distributed.

18. Undoubtedly, I am dealing with an unfortunate event while date of marriage was fixed between the daughter of the

opposite party no. 2 and son of petitioner no. 3 but ultimately the marriage did not come about. Even the bride-groom died during pendency of the revision application.

19. Definition of Cheating is depicted in Section 415 of IPC which runs as follows:-

“ 415. Cheating.—

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.— A dishonest concealment of facts is a deception within the meaning of this section.”

20. Now, I would like to set out the provision of Section 420 of the IPC which runs below:-

“420. Cheating and dishonestly inducing delivery of property.—

“ Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which

may extend to seven years, and shall also be liable to fine.”

21. If I take both the provisions in juxtaposition, it would be clear that Section 420 only deals with an act of inducement to deliver the property **not** any inducement to do or not to do anything which he would not do or omit if he were not so deceived.

22. After dissection of provision of Section 415 of the IPC following ingredients are found:

i. Accused must deceive the complainant fraudulently, dishonestly or intentionally.

ii. The complainant must have been induced to:

a. Deliver any property or allow any person to retain any property.

b. Do or omit to do anything which he ought not to have done, if he was not so deceived.

c. The act or omission likely to cause any harm to the complainant in body, mind, reputation or property.

23. Section 420 of IPC deals with the ingredients of [i, ii & ii (a)] as discussed above with regard to ingredients of Section 415 of the IPC.

- 24.** I am of the view that the legislature consciously excluded the ingredients ii (b) & ii (c) as discussed in paragraph 22 from the provision of Section 420 of the IPC. Had not been so, legislature would not have codified the penal provision of Section 417 of the IPC which, in my opinion, deals with the ingredients number ii(b) & ii(c) of the provision of Section 415 of IPC.
- 25.** Section 417 of the IPC deals with all kinds of cheating. Therefore, though ingredients of ii (b) & ii(c) were excluded from Section 420 of the IPC but in such cases accused may be dealt with under Section 417 of the IPC.
- 26.** In view of the aforesaid discussion, what I find is that key ingredients of Section 420 of IPC are 'inducement' and 'delivery of property'. In our case, FIR did not disclose any such inducement to deliver property rather FIR discloses an act of inducement by the accused to do an act by the complainant which he ought not to have done, if he was not so deceived.
- 27.** Unfortunately, such act on the part of the accused does not come within the purview of 420 of the IPC but it attracts the offence under Section 417 of the IPC which is a non-cognizable offence.

- 28.** Section 155 (2) of the Cr.P.C clearly mandates that no Police Officer can investigate any non-cognizable offence without order of Magistrate unlike this case where specific police case was registered under Sections 420/406/34 of the IPC and investigation was conducted.
- 29.** So far as Section 406 of the IPC is concerned, 'entrustment of property' is a key ingredient to constitute an offence. In this case, no such entrustment has ever been disclosed in the FIR.
- 30.** Therefore, the FIR of this case does not disclose any cognizable offence either under Section 420 or under Section 406 of the IPC.
- 31.** All discussions made hereinabove boils down to only option of quashment of proceedings.
- 32.** In the aforesaid view of the matter, the proceedings in connection with G.R. Case No. 3 of 2015 arising out of Chakdaha Police Station Case No. 838/ 2014 under Sections 420/406/34 of the IPC stands quashed.
- 33.** As a sequel, the instant criminal revision application being no. CRR 2234 of 2015 stands allowed.
- 34.** Case diary be returned.

- 35.** Connected applications, if there be any, stand disposed of accordingly.
- 36.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 37.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]