

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2023
(arising out of SLP (CrI.) No. 13485 of 2023)

LALIT CHATURVEDI & OTHERS APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH & ANOTHER RESPONDENT(S)

O R D E R

Leave granted.

Heard the learned counsel for the parties.

First Information Report¹ No. 287/2019 for the offence(s) punishable under Sections 406 and 506 of the Indian Penal Code, 1860² was registered on 30.08.2019 with Police Station - Hapur Dehat, District - Hapur, Uttar Pradesh *vide* the complaint made by Sanjay Garg, who is respondent no. 2 in the present appeal. The relevant portion of the complaint, as converted into the FIR, reads as under:-

"Sir, it is submitted that the applicant is the proprietor/owner of the firm Garg Timber Products located in Village Patna, Police Station Hapur Dehat District Hapur, in which the applicant deals in waste wood (buying and selling of wood). From 01.12.2015 to 06.08.2017, the applicant had supplied wood waste fuel worth Rs 5,69,31,811/- along with the bill to the owner of Asar Eco Power Limited, situated at Kosi Kala Village

1 For short "FIR".

2 For short "IPC".

Dotana District Mathura viz. VK Chaturvedi S/o Shri Murari Lal Chaturvedi, Mob. No. 9879211625, Address Managing Director, Asar Eco Power Limited, 630 Village Dotana NH-2 Umbrella District Mathura UP and Resident of 1402 14th Floor Lasirna CHS Limited JP Road Andheri West Mumbai 400058 and Manoj Chaturvedi Director, son of Shri Murari Lal Chaturvedi, resident of 348 Nangla Paisa Mathura Uttar Pradesh Mob. No. 9719861000 and Lalit Chaturvedi Director, Asar Eco Power Limited Kosi Kala Gram Dotana District Mathura Mob. No. 9358704070 and Mukesh Sharma Director Asar Eco Power Limited Kosi Kala Gram Dotana District Mathura Mob. No. 8859008302, for which RTGS of Rs.3,76,40,553/-was made by the above four persons. The applicant is continuously demanding the outstanding amount of Rs. 1,92,91,358/-, but the above four persons are not ready to pay the remaining amount to the applicant and there is a clear refusal and they are saying that we buy goods from people like you by lying. The above four persons, with the intention of deceiving the applicant and extorting money, purchased the wood waste dishonestly and fraudulently with the intention of benefiting themselves and causing loss to the applicant and usurped the remaining amount of Rs. 1,92,91,358/- of the Applicant. The above four persons are vicious, cunning and domineering people who are not paying the remaining amount of the applicant on the strength of their dominance and are threatening to kill if the demand is made. Due to which the applicant is quite mentally disturbed and there is a threat to his life and property from the above mentioned people. The applicant went to the police station

to file a report about this incident but the police station officials refused to take any action and register the applicant's report. Therefore, you are requested to direct the SHO, Police Station Hapur Dehat, to register the report of the applicant and take the strictest legal action against the above mentioned four people and to give the applicant's money to him. Date Sd Hindi Sanjay Garg Applicant Sanjay Garg Son of Late Shri Madanlal Garg Resident of 1899 New Pannapuri Garh Road Hapur Police Station Hapur Dehat District Hapur Mob. No. 9412218796. Note: I CC 325 Rajeev Kumar certify that the copy of the complaint was typed word for word by me on the computer."

After the investigation, the police has filed the charge sheet under Section 173 of the Code of Criminal Procedure, 1973³, which verbatim reproduces the complaint and, thereupon, refers to the fact that the appellants, namely, Lalit Chaturvedi, Mukesh Sharma and Manoj Chaturvedi have approached the High Court of Judicature at Allahabad and obtained an order granting stay of arrest. Thereafter, it is recorded as under : -

"From the statement of the complainant and independent witnesses, it was found that the case is under Section 420 IPC and accordingly, Section 420 IPC was added. It is clear from the documents provided by the complainant and the advocate of the named accused that the named accused committed fraud and did not return Rs.19291358/- to the complainant and the complainant was threatened by the named accused Manoj Chaturvedi when he asked for the money. After thorough

³ For short "Cr.P.C.".

investigation, statement by complainant, statement by sources and in detail, crime under section 406, 420 IPC was found against all the accused and along with the above mentioned sections, a case of Section 506 IPC is also being found against Manoj Chaturvedi Chaturvedi. Therefore, charge sheet number 318/19 is presented in the court through challan. Please summon the evidence and punish the accused. The investigation is concluded."

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.

In "*Mohammed Ibrahim and Others v. State of Bihar and Another*"⁴, 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:

4 (2009) 8 SCC 751.

(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)."

Similar elucidation by this Court in "*V.Y. Jose and Another v. State of Gujarat and Another*"⁵, 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

5 (2009) 3 SCC 78.

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*"⁶, "*Indian Oil Corporation v. NEPC India Ltd.*"⁷, "*Vir Prakash Sharma v. Anil Kumar Agarwal*"⁸ and "*All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain*"⁹.

Having gone through the complaint, which was registered as an FIR and the assertions made therein, it is quite clear that respondent no. 2/complainant - Sanjay Garg's grievance is regarding failure of the appellants to pay the outstanding amount, in spite of the respondent no. 2/complainant - Sanjay Garg's repeated demands. The respondent no. 2/complainant - Sanjay Garg states that the supplies were made between the period 01.12.2015 and 06.08.2017. The appellants had made the payments from time to time of Rs. 3,76,40,553/- leaving a balance of Rs. 1,92,91,358/-.

We will assume that the assertions made in the complaint are

6 (2003) 5 SCC 257.

7 (2006) 6 SCC 736.

8 (2007) 7 SCC 373.

9 (2007) 14 SCC 776.

correct, but even then, a criminal offence under Section 420 read with Section 415 of the IPC is not established in the absence of deception by making false and misleading representation, dishonest concealment or any other act or omission, or inducement of the complainant to deliver any property at the time of the contract(s) being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averments. A prayer is made to the police for recovery of money from the appellants. The police is to investigate the allegations which discloses a criminal act. Police does not have the power and authority to recover money or act as a civil court for recovery of money.

The chargesheet 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.¹⁰ 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

¹⁰ *Wolfgang Reim and Others v. State and Another*, 2012 SCC OnLine Del 3341; *Mahindra and Mahindra Financial Services Ltd. and Another v. Delta Classic (P.) Ltd.*, (2011) 6 Gauhati Law Reports 604; *Mukesh Sharma v. State of Himachal Pradesh*, 2024:HHC:35.

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.

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.

In view of the aforesaid discussion, the impugned judgment is set aside and the present appeal is allowed quashing the FIR and resultant proceedings, including the chargesheet.

We clarify that the present appeal only deals with the question of criminal offence. We have not commented or made any observations on the civil rights of respondent no. 2/complainant - Sanjay Garg.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
FEBRUARY 06, 2024.

ITEM NO.9

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 13485/2023

(Arising out of impugned final judgment and order dated 21-08-2023 in A482 No. 29424/2023 passed by the High Court of Judicature at Allahabad)

LALIT CHATURVEDI & ORS.

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(IA No.215156/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.215157/2023-EXEMPTION FROM FILING O.T.)

Date : 06-02-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Petitioner(s) Mr. Rajul Bhargava, Sr. Adv.
Mr. Atul Kumar, Adv.
Mr. Abhimanyu Sharma, Adv.
Ms. Deepali, Adv.
Mr. Pulak Bagchi, Adv.
Ms. Chander Kiran, Adv.
Mr. Tarun Gupta, AOR

For Respondent(s) Mr. Rajat Singh, AOR
Mr. Abhishek Singh, Adv.
Mr. Sarthak Chandra, Adv.
Mr. Arun Pratap Singh Rajawat, Adv.

Mr. Gautam Das, AOR
Mr. Sanjeev Kumar Punia, Adv.
Mr. Dharendra Kumar Jha, Adv.
Mr. Rajinder Singh Chauhan, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)