

Bench

Mr. Justice Bhishmadev Chakrabortty

and

Mr. Justice A.K.M. Zahirul Huq

Criminal Miscellaneous Case No.8147 of 2024

Md. Jahangir Hossain Mia alias Md.
Jahangir Monir Hossain Mia

.....accused-petitioner

-Versus-

The State and another opposite parties

Mr. Munsurul Haque Chowdhury, Senior
Advocate with Mr. Md. Jumon Ali, Advocate

..... for the petitioner

Mr. Muhammad Amirul Haq with Mr. Zahid
Ahammed Hero, Advocates

..... for opposite party 2

Judgment on 11.12.2024.

Bhishmadev Chakrabortty, J:

The Hon'ble Chief Justice has sent this matter to this Bench for disposal.

The Rule was issued calling upon the opposite parties to show cause as to why the proceedings of CR Case No.162 of 2022 (Kamar) arising out of Petition No.39 of 2022 under sections 406 and 420 of the Penal Code now pending in the Court of Senior Judicial Magistrate-3, Sirajgonj should not be quashed and/or such other or further order or orders passed to this Court may seem fit and proper. At the time of issuing the Rule all further proceedings of the aforesaid case was stayed for a limited period which was subsequently extended and still subsists.

Facts relevant for disposal of the Rule, in brief, are that opposite party 2 herein filed a petition of complaint in the cognizance Court of Sirajganj against this petitioner and his wife (accused 1 & 2 respectively). In the complaint it has been alleged that accused 1 is his younger brother and accused 2 is the wife of accused 1. The complainant has been working and living in Germany for near about 43 years. He got accused 1 admitted to Bhuiyan Academy by expending Taka 20 (twenty) lac but he could not pass even a semester. Accused 1 having been involved in women scam lent money from the complainant to get rid of the above but he did not repay it. The complainant also made arrangement of employment of accused 1 as a teacher of a school. On the death of the complainant's mother in 2003 their joint family had cattles, trees, power tiller, shallow machines, paddy husking machine and paddy worth about Taka 11.10 lac. The accused sold the above properties and without giving share to the complainant misappropriated the whole. They had 40 *bighas* of land which produces estimated at 850 maunds of paddy every year valued at about Taka 8.50 lac. Accused 1 had been maintaining the property but he did not pay any farthing to the complainant for last 16 (sixteen) years and thus misappropriated total amount of taka 1.36 crore. On the date of first occurrence, the complainant demanded his share of money from the accused. The accused prayed for time but by paying the illegally

gained money to the terrorists consistently engaged in maligning the complainant. The complainant demanded the money again on the day of second incident but the accused with the help of *mastans* threatened him and refused to pay it. The accused has consistently been making threat to the complainant with dire consequences, if he again make any demand. The accused spread money for publishing false news in complainant's name causing damage to his honour. The accused kept all the original documents of land of the complainant with them and refused to return those. Hence the petition of complaint under sections 406, 420, 379 and 506 of the Penal Code against 2 (two) accused named therein.

The Chief Judicial Magistrate, Sirajganj examined the complaint under section 200 of the Code of Criminal Procedure (the Code) and directed the Police Bureau of Investigation (PBI), Sirajganj to enquire into the matter and submit a report. In compliance thereof, the PBI submitted a report on 21.12.2022 with the finding that the offence of sections 406 and 420 of the Penal Code against the accused is found *prima facie* to be true. The Magistrate then took cognizance of offence against this petitioner and his wife under sections 406 and 420 of the Penal Code and issued summons against them. The accused petitioner surrendered before the learned Magistrate and obtained bail. On the date of hearing on charge, both the accused filed an application under

section 241A to the Code praying for their discharge. The learned Judicial Magistrate, Sirajganj upon hearing allowed the said application in part. He discharged accused 2 from the case and framed charge against the petitioner under sections 406 and 420 of the Penal Code. The petitioner then approached this Court with the present application under section 561A of the Code for quashing the proceedings of aforesaid case upon which the Rule was issued and an interim order of stay was passed.

Mr. Md. Munsurul Hoque Chowdhury, learned Senior Advocate for the petitioner taking us through the petition of complaint submits that as per statement made therein the properties are joint property of two brothers and the complainant is a co-owner of it. There is no inducement and intent to deceive or cheating as per the petition of complaint and as such no offence as defined under sections 405 and 415 of the Penal Code has been disclosed for which the petitioners can be tried under sections 406 and 420 of the same Code. He further submits that at best there may be a case of settlement of accounts for dividing the joint property between the brothers. Since no offence disclosed under the aforesaid sections of the Penal Code, therefore, the very taking of cognizance against the petitioner under the aforesaid sections and proceeding with the case against him is an abuse of the process of the Court which is required

to be quashed to secure the ends of justice. The Rule, therefore, would be made absolute.

Mr. Zahid Ahammad, learned Advocate for opposite party 2 on the other hand opposes the Rule and submits that on a plain reading of the petition of complaint, the offence of initial intention to deceive and cheating are found against this petitioner. The PBI on inquiry found allegation under sections 406 and 420 of the Penal Code against the accused *prima facie* to be true and submitted the report. The offence of entrustment and cheating as defined in sections 405 and 415 respectively has been found against the accused which comes within the meaning of sections 406 and 420 of the Penal Code. Since a *prima facie* case has been disclosed in the petition of complaint which is supported by the report of PBI, it is to be decided in the trial of the case on examining witnesses. He refers to the case of Jamila Khatun Vs. The State, 18 BLC (AD) 223; State Vs. Ariful Islam @ Arif 19 BLC (AD) 82; Abu Bakkar Siddique Vs. The State, 18 BLD (AD) 289 and the case of Khalilur Rahman Vs. Alauddin Akand and others, 26 BLC (AD) 158 and relied on the *ratio* laid therein. He finally submits that since in the petition of complaint offence of entrustment, initial intention to deceive, misappropriation of money and cheating against the petitioner have been disclosed, it cannot be said to be a case of only civil in nature. In the premises above, the Rule should be discharged.

We have considered the submissions of both the sides, gone through petition of complaint, the provisions of law and *ratio* of the cases cited. In the petition of complaint, the complainant brought allegation against the petitioner of committing offence of criminal breach of trust and cheating specifically. It has been stated that he has misappropriated Taka 11.10 lac by selling joint properties without paying a single farthing to the complainant. Moreover, for last 16 years he did not pay price of crops from the complainant's property valued Taka 1.36 crore. It is also stated therein that the petitioner refused to pay the due amount and the original documents of the complaint related with land is lying with the petitioner but he is not handing over those. It further appears that the PBI on inquiry submitted a report finding offence against the accused under sections 406 and 420 of the Penal Code. On receipt of the report, learned Magistrate took cognizance of offence against two accused but subsequently discharged accused 2 finding no offence against her under the aforesaid sections.

The offence of cheating which is punishable under section 420 of the Penal Code is defined in section 415 of the same Code as under-

“**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 the section.”

The offence of criminal breach of trust punishable under section 406 of the Penal Code has been defined in section 405 of the same Code which is as under-

Criminal breach of trust- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any person so to do, commits “criminal breach of trust”.

On going through the aforesaid provisions of law, we find that the petition of complaint as well as report of PBI do disclose offence against the petitioner under sections 406 and 420 of the Penal Code which is required to be decided in the trial of the case on examination of witnesses.

In view of the *ratio* laid in the case of Abu Bakkar Siddique vs. the State, 18 BLD (AD) 289, we find that the offence of initial intention to deceive and misappropriation of the money and

properties of the complainant and cheating have been disclosed. Therefore, it cannot be said that this is a case of civil liability only and the complainant had to file a suit to get his share after accounting. The argument made by Mr. Chowdhury to that effect, therefore, bears no substance. None of the *criterion* as laid in the case of Ali Akkas vs. Anayet Hossain and others, 17 BLD (AD) 44 for quashing a proceeding match this case. We hold that the allegation brought in the petition of complaint against this petitioner is to be decided in the trial of the case on taking evidence.

Therefore, we find no merit in this Rule. Accordingly, the Rule is discharged. The order of stay stands vacated.

However, the concerned Court is directed to dispose of the case expeditiously preferably within 6 (six) months from the date of the receipt of the judgment and order.

Communicate the judgment and order to the Court concerned.

A.K.M. Zahirul Huq, J.

I agree.