

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Petn. No.54 of 2022

IndiaMART IntertMESH Ltd., a company registered under the Indian Companies Act, 1956 having its registered office at, 1st Floor, 29-Daryaganj, Netaji Subash Marg, Delhi –110002 and Corporate office at 6th Floor, Tower-2, Assotech Business, Cresterra, Plot No.22, Sector 135, Noida, 201305, Uttar Pradesh, (Date of incorporation: 13.09.1999) to be represented by Mr. Neeraj Arora, Authorized Representative of India Mart Intermesh Limited having its office at First Floor-29 Darayaganj Delhi-110002.

.....Petitioner(s)

V E R S U S

1. State of Tripura

2. Sh. Ratnadeep Sircar, S/o Sh. Sustana Sircar, R/o Indranagar, Jagatpur Kalibari Road, West Tripura -799005, +91 7005123034.

.....Respondent(s)

For Petitioner(s) : Mr. B.N. Majumder, Sr. Advocate,
Mr. K. Deb, Advocate,
Mr. Sujit Chandra Sen, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor,
Mr. Biplab Debnath, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **6th February, 2023.**

JUDGMENT & ORDER (ORAL)

Heard Mr. B.N. Majumder, learned senior counsel assisted by Mr. K. Deb, learned counsel appearing for the petitioner. Also heard Mr. Ratan Datta, learned Public Prosecutor appearing for the respondent-State and Mr. Biplab Debnath, learned counsel appearing for the respondent No.2-complainant.

2. This instant Criminal Petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C, for short) read with Article 227 of the Constitution of India for quashing the order of cognizance dated 09.12.2020 and for further quashing the proceedings in Case No.CR-155 of 2020 pending before the learned Judicial Magistrate 1st Class, Court No.1, Agartala, West Tripura.

3. Brief facts of the case as revealed from the complaint petition (Annexure-5) are that the respondent No.2 had contacted the petitioner, Indiamart Intermesh Ltd., an online international marketer that assists purchaser, manufacturers, suppliers and exporters to trade with each other, for taking suggestion to purchase a generator for his domestic purpose. Accordingly, the petitioner suggested one company namely Power Boats Automation having its registered office at Ahmedabad, Gujarat. Subsequently, the respondent No.2 approached CEO of Power Boats Automation and shared his requirement over telephone. After mutual consent of both the parties, the respondent No.2 confirmed his order on 21.02.2020.

4. When respondent No.2 finally received the consignment on 02.07.2020, he discovered that no facilities were available in the generator as promised by Power Boats Automation and further came to know that the printed rate on the generator was much lower than the amount paid by the respondent No.2. Thereafter, the respondent No.2, being cheated had made a complaint under Section 190 of Cr.P.C before the learned Chief Judicial Magistrate, West Tripura, Agartala making the petitioner Opposite Party No.2 alleging that the present petitioner and Power Boats Automation are responsible for the commission of offence under Section 420 of the Indian Penal Code (IPC, for short) read with Section 120B of IPC and a case was registered being Case No.CR-155 of 2020. Subsequently, on 09.12.2020, the learned Magistrate took cognizance of offence under Section 420 of IPC read with Section 120B of IPC against the petitioner and the seller and also recorded the statement of the complainant under Section 200 of Cr.P.C. and served summon to the present petitioner to appear before the trial Court. Being dissatisfied with the complaint and subsequent order of cognizance dated 09.12.2020 passed by the learned Magistrate, the petitioner has preferred this criminal petition. Hence, this case.

5. Mr. B.N. Majumder, learned senior counsel appearing on behalf of the petitioner, contends that India Mart is an online platform which only provides details of sellers and has no other nexus between the purchaser and the seller; neither in terms of any financial transactions nor other product related issues. He further contends that suggestions in terms of name of sellers as reflected by this online platform are not mandatory in nature to follow and onus of products and transactions related issues between the seller and purchaser does not lie with the petitioner since the petitioner merely acts as a free of cost meeting point wherein the purchaser provides the details as per requirement. Hence, Mr. Majumder, learned senior counsel, contends that the averments made in the complaint do not constitute any offence punishable under Section 420 read with 120B of IPC and learned Magistrate without appreciating the contents of complaint and also without considering the ingredients of aforesaid penal provisions of law mechanically passed the order of cognizance. Accordingly, he prays for setting aside the impugned order dated 09.12.2020.

6. On the other hand, Mr. Biplab Debnath, learned counsel appearing on behalf of the respondent No.2-complainant, in rebuttal of the submissions advanced by the learned senior counsel for the

petitioner, contends that the respondent No.2 has been cheated by both the petitioner and the seller and hence, the petitioner cannot fight shy of the allegations leveled against him and is equally responsible for the damage caused to him. Accordingly, he contends that the learned trial Court has correctly taken cognizance of offence against the petitioner herein vide order dated 09.12.2020 and prays for dismissal of the instant petition.

7. After hearing learned counsel for both sides, this Court is of the considered view that there is no nexus of the petitioner in terms of any financial transactions between the respondent No.2 and the seller apart from the suggestion given by the petitioner. Suggestions are suggestive in nature and the petitioner herein cannot be made responsible for giving mere advice to the respondent No.2 for purchasing a product from a certain seller since one is the master of one's own decision and is free to take any fair decision.

8. In view of above, the present criminal petition stands allowed and the impugned order dated 09.12.2020 passed by Ld. Judicial Magistrate, 1st Class, Court No.4 is set aside so far as the petitioner-India Mart is concerned. The respondent No.2-complainant is

at liberty to avail remedies against the petitioner-India Mart as well as the other accused person in accordance with law.

9. With the aforesaid observations and directions, this criminal petition is allowed and stands disposed of.

10. Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pijush

