

Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No.2 of 2020

Date of Decision: 27.09.2023

Shri. Deepak Mittal

Vs. M/s Jud Cements Limited.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. P. Nongbri, Adv.

For the Respondent(s) : Mr. K. Paul, Sr. Adv. with
Mr. S. Khyriem, Adv.

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| i) | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER

1. Heard Mr. P. Nongbri, learned counsel for the petitioner. Also heard Mr. K. Paul, learned Senior counsel assisted by Mr. S. Khyriem, learned counsel for the respondent.

2. This application under Section 482 Cr.P.C has been filed praying for setting aside and quashing of the criminal complaint

bearing CR Case No.3/2018 and impugned orders dated 30-10-2018 and 20-11-2018 passed therein by the Additional Deputy Commissioner (J), East Jaintia Hills District, Khliehriat.

3. The notable facts of the case are that the respondent M/s Jud Cements Limited had vide purchase order dated 21-03-2016 placed an order before M/s Mittal Alloy Casting Company, wherein the petitioner is a partner, for supply of Grinding Media Balls to the tune of Rs. 55,36,687/-. On 31-03-2016 the respondent issued four post dated cheques dated 07-05-2016, 10-05-2016, 17-05-2016 and 13-05-2016, all from IDBI Bank Guwahati, Assam in favour of M/s Mittal Alloy Casting Company amounting to Rs 55,36,687/- in total as a financial security for the order. Thereafter, the petitioner company supplied the grinding media ball to the respondent and, accordingly, issued sale invoices dated 09-04-2016, 15-04-2016 and 25-04-2016. On receipt of the materials, the respondent made a part payment of rupees 5 (five) lakhs on 09-05-2016 to the petitioner company vide RTGS. On 07-06-2016, the respondent made another part payment of rupees 3 (three) lakhs vide RTGS. Since the respondent did not make any further payment, on 20-06-2016 the petitioner deposited all the cheques, which were received as financial security from the respondent, to the Union Bank of India, Raigarh. All the cheques were dishonoured because of insufficient funds in the account of the

respondent. Thereafter, the petitioner issued a legal notice dated 07-07-2016 to the respondent demanding payment of dues of Rs.46,28,260/- within a period of 15 (fifteen) days from the date of the receipt of the said legal notice. However, the respondent did not come forward to make any payment even after the lapse of 15(fifteen) days. Consequently, the petitioner filed a complaint case being Criminal Case No.214 of 2017 under Section 138 of the Negotiable Instrument Act, 1881 against the respondent before the Court of Judicial Magistrate, First Class, Raigarh, C.G. The case was registered vide order dated 09-05-2017 and on being aggrieved by the said order, two revision petitions were filed being Criminal Revision No.161 of 2018 and Criminal Revision No.162 of 2018 by the respondent and different directors of the respondent-company. The learned Court of the Additional Sessions Judge, Raigarh, CG after hearing the parties vide order dated 07-09-2019 dismissed both the aforesaid revision petitions.

4. In the meanwhile, on 30-10-2018 after more than two years of the supply of the Grinding Media Balls by the petitioner, the respondent filed a complaint case being CR case No.3 of 2019 under Section 200 Cr.P.C. before the Additional Deputy Commissioner (J) East Jaintia Hills District, against the petitioner alleging, *inter-alia*, that M/s Mittal Alloy Casting Company had made supply of inferior

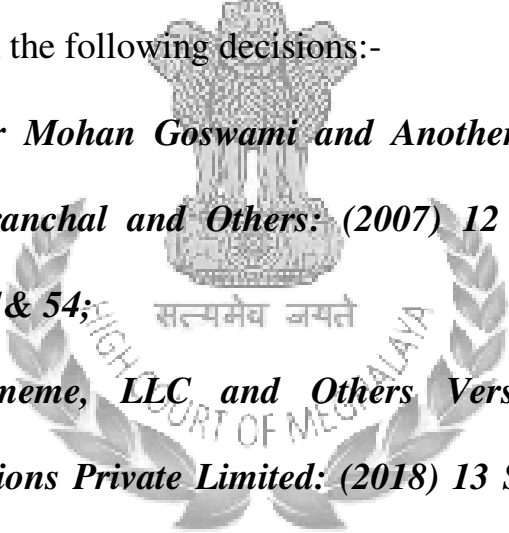
quality of Grinding Media Balls to the respondent and that M/s Mittal Alloy Casting Company refused to replace the said Grinding Media Balls as agreed in the purchase terms. On the basis of the fact, it was alleged that the petitioner has committed an offence under Sections 406, 418, 420, 422, 425 and 427 IPC. On the filing of the complaint, the statement of the complainant was recorded and thereafter by order dated 30-10-2018 a bailable warrant of arrest was issued against the petitioner for his appearance before the Trial Court. Subsequently by another order dated 20-11-2018 a non-bailable warrant of arrest was issued against the petitioner in the matter.

5. The petitioner, in the present application, has stated that the bailable warrant of arrest and the non-bailable warrant of arrest which were issued by the Trial Court had never been executed against him. In fact, the petitioner had no knowledge of criminal complaint bearing CR case No.3 of 2018 pending against him. It was only on 09-04-2019 when he was approached for settlement in the matter, he came to know about the said complaint case. The petitioner stated that after the effort of settlement failed, he engaged his lawyer to pursue the CR case No.3 of 2018 and after obtaining certified-copy of all the materials, has decided to approach this Court seeking quashing of the entire proceedings of the aforesaid complaint case.

6. Mr. P. Nongbri, learned counsel for the petitioner contends that the CR case No.3 of 2018 which has been filed after the lapse of two years from the date of supply of materials has come as a counter-blast to the filing of the criminal complaint under Section 138 of the Negotiable Instrument Act, 1881 by the petitioner. He submits that if at all there was any criminal complaint with regard to the supply of materials and quality thereof, it should have been filed immediately on the receipt of the materials supplied. He further submits that the criminal case No.3 of 2018 has been filed by the respondent with an ulterior motive to harass the petitioner and also for the purpose of escaping from making payment of remaining dues of Rs.46,26,628/- to the petitioner. It is also the contention of the learned counsel for the petitioner that the respondent admitted in the complaint that there exist an agreement/contract stipulating the terms and conditions for supply of Grinding Media Balls to the respondent and, in such a situation, the respondent could not have filed a criminal case against the petitioner. The dispute raised by the respondent against the petitioner is purely civil in nature and by no stretch of imagination the same can be used for initiating criminal action against the petitioner. He submits that mere deficiency of service cannot be termed as either breach of trust or cheating. Furthermore, he contends that there is no specific allegation against the director of M/s Mittal Alloy Casting

Company and if the entire complaint petition is accepted at its face-value, the same would not make out any criminal offence against the petitioner. The initiation of the criminal proceeding is an abuse of process of law. He, as such, submits that the entire CR case No.3 of 2018 and subsequent impugned orders dated 30-10-2018 and 20-11-2018 are not tenable in the eye of law and liable to be set aside and quashed.

7. In support of his submission, Mr. P. Nongbri, learned counsel placed reliance on the following decisions:-

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- i) ***Inder Mohan Goswami and Another Versus State of Uttaranchal and Others: (2007) 12 SCC 1 at Paras 46,51& 54;***
 - ii) ***Medmeme, LLC and Others Versus Ihorse BPO solutions Private Limited: (2018) 13 SCC 374 at Paras 12 & 13;***
 - iii) ***Sushil Sethi and Another Versus State of Arunachal Pradesh and Others: (2020) 3 SCC 240 at Paras 6, 7.7 & 8.2;***
 - iv) ***Govind Prasad Kejriwal Versus State of Bihar and Another: (2020) 16 SCC 714 at Paras 6.1 & 6.3 and***
 - v) ***Chanchalpati Das and Madhupandit Das. Versus The State of West Bengal & Another in Criminal Appeal No.***

***1592 of 2023 along with Criminal Appeal No. 1593 of
2023. At paras 16 & 17***

8. Mr. K. Paul, learned Senior counsel for the respondent, per contra, submits that institution of the Criminal Case No.3 of 2018 by the respondent against the petitioner cannot be termed as a counter-measure against the complaint case filed under Section 138 of Negotiable Instrument Act, 1881 by the petitioner against the respondent. By referring to the legal notice dated 07-07-2016 addressed to the respondent on behalf of the petitioner wherein demand for payment of dues amounting to Rs.46,28,216 was made, he submits that the said notice was addressed in the year 2016 and the CR case was filed in the month of October, 2018 after lapse of more than 2 (two) years; had there been any intention on the part of the respondent to take counter-measure by filing a criminal case, it would have been done immediately after the receipt of the legal notice dated 07-07-2016. He submits that the Criminal case was filed on the detection of defects in the materials supplied and refusal by the petitioner to replace the same. Referring to the paragraphs 6,7,8 & 9 of the complaint in CR case No.3 of 2018, the learned Senior counsel submits that there is a clear intention on the part of the petitioner to cheat the respondent by supplying inferior quality of materials and the

petitioner has also committed breach of trust by not replacing the defective materials. He further submits that a prima facie case under Section 406, 418, 420, 422, 425 and 427 IPC has been clearly made out against the petitioner and the issuance of process in the criminal case cannot be faulted with. He submits that the allegations made in the complaint cannot be termed as absurd and inherently improbable. He submits that the allegations made in the complaint disclosed the commission of offence and clearly makes out a case for proceeding against the petitioner. Further, the learned Senior Counsel submits that it is a settled law that a fact may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable, it does not mean that criminal complaint cannot be maintained. He contends that at this stage it cannot be stated that the complaint filed by the respondent is a frivolous complaint. He submits that power possessed by the High Court under Section 482 of the Cr.P.C. is very wide but the same requires great caution in its exercise. Court must be careful to see its decision in exercise of this power is based on sound principle. The inherent power should not be exercised to stifle a legitimate prosecution. In a proceeding instituted on complaint, exercise of the inherent power to quash the proceeding is called for only in a case where complaint does not disclose any offence or is frivolous, vexatious or oppressive. The learned Senior Counsel

submits that it is not necessary at this stage that there should be meticulous analysis of the case to find out whether case would end in conviction or acquittal. In the present criminal case filed by the respondent, the ingredient of the offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious and, in that event, it would not be justified at this stage that any interference be made by the High Court. He thus submits that the present application under Section 482 Cr.P.C filed by the petitioner is devoid of merit and is liable to be dismissed.

9. The learned Senior counsel placed reliance on the Judgment of the Apex Court in the following decisions:-

i) *State of Haryana & Ors. Vs. Bhajan Lal :1992 Supp (1) SCC 335 (Para 102).*

ii) *Lalmuni Devi (Smt) Vs. State of Bihar and Others : (2001) 2 SCC 17 (Para – 8)*

iii) *Zandu Pharmaceutical Works Limited and Others Vs. Mohd. Sharaful Haque and Another: (2005) 1 SCC 122 (Paras – 8,9, 10, 11).*

10. Paragraph 4 of the complaint in CR Case No.3 of 2018 discloses that there exists an agreement/contract between the parties hereto with regard to the supply of Grinding Media Balls. Annexure-

V of the complaint contains a guarantee/warranty clause which reads as here under:-

“GUARANTEE/WARRANTY: Our supplied material will be guaranteed against manufacturing defects Breakages guarantee/Warrantee we will stand by UP to 2 % - No Replacement, up to 2 – 5% - Actual Breakage Replacement and above 5 % - Full Replacement.”

11. Paragraph 5 of the said complaint reveals that defects in Grinding Media Balls were detected on 12-05-2016 whereas the complaint, as per the record, was filed only on 26-10-2018, that is after lapse of more than 2 years. The respondent after receipt of the supply of Grinding Media Balls undisputedly, apart from making payment of rupees 5 (five) lakhs on 09-05-2016, has also made a payment of rupees 3 (three) lakhs on 07-06-2016, which is after the date of detection of defect in the Grinding Media Balls. In addition to the above facts, vide a communication made through e-mail dated 28-05-2016 by the respondent to the petitioner annexed as Annexure-V to the present revision application, it was stated by the respondent that the material received from the petitioner was not up to the mark and a request was made to compensate the loss. It is pertinent to note that in the said communication the respondent also stated that as directed by the CMD they are going to clear all the dues within the period from 02-06-2016 to 15-07-2016 on an average of rupees 7 (seven) to 8 (eight) lakhs on weekly basis through RTGS; the respondent has also

sought for cooperation from the petitioner in that regard. The aforesaid communication vide e-mail was also made after the date on which defect in the materials was noticed by the respondent.

12. The aforesaid uncontroverted facts make it amply clear that the respondent never had raised any grievance against the petitioner which is criminal in nature at the stage of detection of defects in materials and even immediately thereafter also. The case record of the CR case No.3/2018, the supporting documents and the allegations contained therein do not reveal that the petitioner at any point of time had undertaken to replace the entire material supplied to the respondent.

13. There is no materials to prima facie satisfy the ingredients constituting the alleged offences under Sections 406, 418, 420, 422, 425 and 427 IPC. Even if the allegations and the documents appended to the CR case No. 3/2018 are taken in their face value, none of the ingredients constituting the alleged offences are culled out. The learned counsel for the respondent did not specifically argue on the ingredients of the offences alleged, except for referring to Section 406 IPC and analyzing the provision of Section 405 IPC to impress upon the Court about the presence of the ingredients of the aforesaid Sections of IPC. To attract the offence of criminal breach of trust under Section 406 IPC, it is mandatory to allege that the accused was

entrusted with property or dominion over it and the accused must have misappropriated the property or disposed of that property in violation of such trust. It is not that case of the respondent in the present matter that the petitioner was entrusted with any property and he has dishonestly misappropriated the property. Further, there is no allegation in the complaint that the petitioner had fraudulent and dishonest intention from the very beginning of the transaction with the respondent. It is required to be noted that as per the order placed by the respondent, the petitioner made supply of Grinding Media Balls. Even after the detection of the defects in the materials on 12-05-2016, the respondent vide e-mail dated 28-05-2016 made assurance to pay the remaining balance; in fact an amount of rupees 3 (three) lakhs was paid on 07-06-2016 vide RTGS to the petitioner as part payment. Therefore, it cannot be said that a prima-facie case under Sections 418 and 420 has been made out against the petitioner. Insofar as, section 422 IPC is concerned, the complaint and the materials on record do not project that the petitioner incurred a debt or demand and that the petitioner prevented that said debt or demand due to himself from being available to the respondent. It is thus obvious that there exists no ingredient of Section 422 IPC. Section 425 IPC defines mischief and does not prescribe any punishment. Section 427 IPC prescribes punishment for committing mischief and thereby causing loss or

damage to the amount of fifty rupees or more. To maintain a complaint on the allegation of mischief, there must be an accusation of causing destruction of some property or any change in it or in its situation resulting in destruction or diminish its value or utility, or affect it injuriously. In the complaint filed by the respondent, there is no whisper of any accusation of destruction of any property or any change in its situation by the petitioner. The entire complaint filed by the respondent appears to be frivolous and vexatious.

14. A perusal of the Trial Court record pertaining to the CR Case No. 3/2018 reveals that on the filing of the complaint, the complainant was examined and the Trial Court issued bailable warrant against the complainant at the very first instance by order dated 30-10-2018. Subsequently, by another order dated 20-11-2018, the Trial Court issued the non-bailable warrant of arrest against the complainant without ascertaining whether the bailable warrant issued earlier was at all executed or not. No reason was recorded as to why summon was not issued at the very first instance. It is important to notice that the Trial Court before issuing the process, did not even bother to record whether sufficient grounds for proceedings against the accused exist or not. The formation of such opinion is required to be stated in the order itself as per mandate of Section 204 Cr.P.C. The order is liable to be set aside if no reason is given justifying the issuance of process

against the accused. The first order dated 30-10-2018 passed by the Trial Court in CR case No.3/2018 reads as follows:-

“30/10/2018 Seen the endorsement of the Ld. ADC (J) for disposal of the complaint case filed U/s 200 Cr.PC by the complainant registered as CR case No. 3/2018.

The complainant appeared alongwith Ld. Counsel Shri. S. Pdang.

Statement of the Complainant is taken and recorded accordingly before this Court today.

Issue BWA of Rs. 50,000 to the accused person with a copy of the complaint petition.

Fix 28/11/2018 for appearance of the accused person.”

15. From the above, it is apparent that no satisfaction with regard to the existence of sufficient grounds for proceedings against the accused was recorded by the Trial Court. Thus, the impugned order dated 30-10-2018 passed by the Trial Court in the above case is liable to be set aside on this ground alone. The above view gains support from the proposition of law laid down by the Apex Court in ***Lalankumar Singh and Others versus State of Maharashtra, (2022) SCC OnLine***

SC 1383. At paras 38 and 39 of the aforesaid judgment, it is held:-

“38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation , which reads thus:

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

39. A similar view has been taken by this Court in the case of Ashoke Mal Bafna (supra).

16. In the case of *Inder Mohan Goswami (supra)* at paras 46 and 51, it was held that the Court must ensure that the criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with ulterior motive to pressurize the accused. It was also held that issuance of non-bailable warrant of arrest involves

interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. The Courts have to be extremely careful before issuing non-bailable warrant of arrest.

In the case of *Medmeme, LLC (supra)*, it was held that the Court is to see whether dispute between the parties is essentially of civil in nature or any case is made out against the accused for launching criminal prosecution under Sections of law as alleged in the complaint.

The observation made in the case of *Govind Prasad Kejriwal (supra)* cited by the petitioner is based on the factual background of that case. However, what can be gathered from therein is that even after consideration of the allegation in the complaint as they are, if no prima-facie case is made out, to continue criminal proceedings against the accused will be abuse of process of Court and Law.

In the case of *Sushil Sethil (supra)* on the background of absence of specific allegations against the Managing Director or even the Director, it was held that the Penal Code does not contain any provision for attracting vicarious liability on the part of the Managing Director or the Director of the Company when the accused is the company. It was further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It was further observed that the statute indisputably must contain provision fixing such vicarious liability. It was further observed that even for the said purpose, it is obligatory on the part of the complainant to make

requisite allegation which would attract the provision containing vicarious liability.

In the case of *Chanchalpati Das (supra)*, it was held that unexpected inordinate delay must be taken into consideration as a very crucial factor and a ground for quashing a criminal complaint.

17. The case-laws cited by the learned Senior counsel for the respondent reported in i) *State of Haryana & Ors. Vs. Bhajan Lal (supra)*, ii) *Lalmuni Devi (Smt) (supra)*, iii) *Zandu Pharmaceutical Works Limited (supra)* have been carefully taken into consideration by this Court while appreciating the facts and circumstances of the present case. There is no quarrel with the proposition of law laid down therein. However, in view of the averments and allegations made in the complaint, the decisions cited are not of much help to the respondent's case before this Court.

18. Having gone through the averments and documents appended to the complaint in the CR case No.3 of 2018 and having anxiously considered the submissions made by the parties, it emerges that the learned Trial Court did not even bother to adhere to the provisions of law contained in Section 204 Cr.P.C. before issuing process and mechanically proceed to issue bailable warrant and non-bailable warrant against the petitioner. There is no clear statement in the complaint as to how and what manner the petitioner, being the Director/partner of Ms. Mittal Alloy Casting Company, was responsible for the conduct of the entire transaction with the respondent. The allegations contained in the complaint and the materials on record do not even make out a prima facie case for offences under Sections 406, 418, 420, 422, 425 and 427 IPC. The

fact that the assurance made vide e-mail dated 28-05-2016 for making the remaining payment, and subsequent payment of rupees 3(three) lakhs on 07-06-2016 as part payment by the respondent to the petitioner, by itself makes the complaint and the proceeding vexatious, frivolous and mala-fide. In the opinion of this Court, the criminal machinery set in motion by filing the complaint for alleged offences which had taken place more than two years ago is an act of sheer misuse and abuse of process of the Court.

19. In view of the discussions made above and in the light of aforestated legal position, this criminal petition under Section 482 Cr.P.C succeeds. The Criminal proceeding emanating from the CR case No. 3 of 2018 pending in the Court of Additonal Deputy Commissioner (J) East Jaintia Hills District, Khliehriat and the impugned orders dated 30-10-2018 and 20-11-2018 passed therein stand quashed and set aside.

20. Lower Court record be returned forthwith.

21. This Crl. Petn. No.2 of 2020 stands disposed of.

JUDGE

Meghalaya
27.09.2023
"Biswarup-PS"