

Court No. - 92

Case :- APPLICATION U/S 482 No. - 3362 of 2013

Applicant :- Anil Gupta And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ashish Mishra,Rajesh Ranjan

Counsel for Opposite Party :- Govt. Advocate,A.K. Ojha,Vinay Kumar Singh

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Jitendra Kumar Srivastava, learned Advocate holding brief of Sri Ashish Mishra, learned counsel for the applicants, Sri Vinay Kumar Singh, learned counsel for the opposite party no.2 and Sri Prem Prakash Tiwari, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of order dated 24.03.2012 passed by learned Chief Judicial Magistrate, Jhansi and orders dated 26.11.2012 and 05.01.2013 passed by learned Judicial Magistrate, Court Room NO.9, Jhansi in Case No.- 953 of 2012, under Sections 406 and 420, I.P.C. (Suresh Chand Gupta Vs. Anil Gupta and Another), P.S.- Kotwali, Jhansi.

3. learned counsel for the applicants submits that there was an agreement between the S.K.S. Ispat and Power Limited and opposite party no.2. The applicants are the MDs of said S.K.S. Ispat and Power Limited. Learned counsel for the applicants further submits that the instant complaint has been filed by opposite party no.2 with regard to disputed payment of work carried out by the opposite party no.2 in pursuance of said contract dated 30.09.2007 enforced into between the parties. Learned counsel for the applicants submits that the said contract excludes the jurisdiction of any Court except the Court situated at Raipur, Chattisgarh. Therefore, any dispute arisen out of said contract cannot be raised before any other Court except the courts at Raipur, Chattisgarh. Learned counsel for the applicants further submits that the instant application has been filed with regard to commercial dispute between the parties and for non-payment of the work done by the opposite party no.2 in pursuance of said contract. Such a dispute which is purely civil dispute in which the criminal proceeding cannot be initiated. Learned counsel for the applicant further submits that since the contract was between the company and S.K.S. Ispat and Power Limited and in the instant complaint the company has not been

made party therefore the instant complaint is not maintainable in the eyes of law.

4. Per contra learned counsel for the opposite party no.2 submits that as per allegation made in the complaint the applicants had come to Jhansi on 01.08.2007 and the contract was signed between the parties. Therefore the courts at Jhansi are competent to entertain the instant complaint. Learned counsel for the opposite party no.2 further submits that there is no dispute with regard to the amount to be paid to the opposite party no.2, therefore, further determination is not required. By not making the payment of work done by o.p. no.2 despite the demand made by him, the applicant has committed offence under Sections 406 and 420 I.P.C., therefore prima facie offence against the applicant has been made out.

5. Learned A.G.A. for the State submits that from the perusal of the complaint the offence prima facie under Section 406 and 420 is made out against the applicant therefore, on the basis of material available before the Court there is no illegality in summoning order passed by Magistrate. Learned A.G.A. further submits that no interference is called for in jurisdiction under Section 482 Cr.P.C.

6. Having heard rival submissions of learned counsel for the parties and from the record of the case it is apparent that the contract has been entered into between the parties S.K.S. Ispat and Power Limited and opposite party no.2 on 20th September, 2007 and the said contract itself provides that in the event of dispute as per the terms and conditions of the contract, matter shall be referred to the Arbitration and in case of any dispute between both the parties the jurisdiction for this contract shall be at Raipur, Chhattisgarh.

7. From the perusal of the allegations as have been made in the instant complaint filed by the opposite party no.2 it prima facie appears that the dispute is raised with regard to non-payment of the work executed by the opposite party no.2 in terms of the said contract, therefore, the appropriate case would have been for the opposite party no.2 to go for the arbitration for payment of said contract . From the record it further appears that there is no demand of any claim made by opposite party no.2. From the complaint it is further apparent that though there was contract between the S.K.S. Ispat and Power Limited the company, however the said company has not been made party in the instant complaint, therefore, the said complaint is also not maintainable against the directors without making parties to the said companies.

8. In view thereof, it was a purely commercial dispute between the parties. The parties has already agreed to refer the dispute before the Arbitrator and, therefore the instant complaint filed by the opposite party no.2 at Jhansi is not maintainable therefore the summoning order dated 24.03.2012 and the consequent orders dated 26.11.2012 and 05.01.2013 bailable warrant against applicants are hereby quashed and entire proceedings of the said Case No.- 953 of 2012 under Sections 406 and 420 I.P.C. (Suresh Chand Gupta Vs. Anil Gupta & Another), P.S.- Kotwali, District- Jhansi is hereby quashed and the instant application is liable to be allowed.

9. The application is ***allowed***, accordingly.

10. It is open for the opposite party no.2 to approach the appropriate forum in terms of the arbitration clause of the contract between the parties, if it is still permissible under the contract and there is no other legal impediment.

Order Date :- 29.11.2023

Virendra