

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 247 of 2015

1. Umesh Agarwal S/o Late M.P. Agrawal Aged About 67 Years R/o India Auction Mart Government And Railway Auctioner, 24, Prafulla Sanker Street, Kolkatta - 700072 W.B. , West Bengal
2. Anil Agrawal S/o Late Shyam Sunder Agrawal (Yogesh Kumar Agrawa Aged About 60 Years R/o India Auction Mart Government And Railway Auctioner, 24, Prafulla Sanker Street, Kolkatta - 700072 W.B. , District : Kolkata, West Bengal
3. Sunil Agrawal S/o Late Shyam Sunder Agrawal (Sunil Mittal) Aged About 54 Years R/o India Auction Mart Government And Railway Auctioner, 24, Prafulla Sanker Street, Kolkatta - 700072 W.B. , District : Kolkata, West Bengal

---- Applicants

Versus

Murari Lal Agarwal S/o Late Rameshwer Lal Agrawal Aged About 42 Years Proprietor - M/s Steel Midiya Jawahar Nagar Ward, Raipur Chhattisgarh , Chhattisgarh

---- Respondent

For Applicants : Shri Sunil Otwani, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

11/01/2019

1. The present petition is against the order dated 12.11.2014 passed in Criminal Revision No. 70/2013 preferred by the applicants before the 7th Additional Sessions Judge, Raipur wherein revision was dismissed affirming the order of the trial Court wherein an application under Section 245 of Cr.P.C. to discharge the applicants was dismissed.
2. The respondent though served, no representation is made.
3. Learned counsel for the applicants would submit that the

respondent has filed a complaint that by an auction on 12.01.1996 which was conducted on behalf of the Railways, the respondent purchased nine scrap i.e. wagons of the Railways which were containing certain numbers. One wagon bearing SR number 37643 was also subject of auction. It was stated though the said purchase was made but when the respondent went to take delivery of the wagon the said wagon bearing number 37643 was not handed over to him. It was stated that despite payment of entire amount of purchase of the scrap wagons, the money though paid, the delivery had not been given. Therefore, offence under Section 406, 420 and 467 of IPC was committed and a complaint case was filed by the respondent.

4. Learned counsel for the applicants submits that in the said complaint two railway officers were also arrayed as accused. It is further stated that two officers had challenged the registration of the complaint wherein the revisional Court in Criminal Revision No. 164/2000 by an order dated 02.11.2000 held that the subject of complaint was of civil nature beside the fact the permission under Section 197 of Cr.P.C. was not obtained. It is stated that the said order was subject of challenge before the High Court in Criminal Revision No. 04/2001 and the High Court too, by its order dated 20.02.2008, has affirmed the order passed by the Sessions Judge. It is stated therefore that the complaint was joint and the two accused have been discharged on the ground that the dispute is of civil nature then in such case, the same analogy would apply to the case of the present applicants. He

refers to the terms of the agreement entered into between the applicants and the Railways and would submit that the dispute is purely of civil nature. It is stated that in respect of delivery and particulars of property of auction the entire description were to be given by the Railways and in the Wagon No. 37643, the Railways due to typographical mistake gave the number 87643. Therefore, as per the terms of the general conditions of purchase with the Railways, the complainant should have referred the dispute to the Arbitrator as the issue could have been easily solved but instead of going to the Arbitrator, the criminal complaint was preferred. As such, the complaint itself was devoid of any merit.

5. Perused the record of the Court below and the orders of the learned Sessions Judge.

6. The order of the learned Sessions Judge would show that he observed the fact that two of the railway officers who were arrayed as accused 4 and 5 were discharged by holding the subject complaint to be of civil nature. The Learned court below further held that since the complainant has paid the amount to the railways and the wagon were not delivered to him and since the applicants herein were working for railways as such, agreed with the order of JMFC whereby prayer to discharge the applicants disallowed.

7. The complaint is on record which shows that Murari Lal Agrawal has preferred the complaint also against the applicants and two Railway officers namely R.C.Sharma and K.K. Mishra. The record

would reveal that after the registration of the complaint two of the Railway officers challenged the said registration in Criminal Revision No. 164/2000 before the 7th Additional Sessions Judge, Raipur and the Court by its order dated 02.11.2000 quashed the complaint against the two railway officers by giving a clear finding that after evaluating the entire evidence, it appears that the dispute complaint is of civil nature and further held that sanction under Section 197 Cr.P.C. was also not obtained. The said order was subject of challenge before the High Court in Criminal Revision No. 04/2001. The High Court by its order dated 04.02.2008 affirmed the finding of the learned Sessions Judge. In result of that, the natural consequence would be the finding with respect to fact that dispute was/is of civil nature was fortified and affirmed.

8. Apart from the agreement which is placed on record it shows that the applicants were working as an agents to conduct the sale of the scrap thereby *prima-facie* it appears that the process of auction to conduct the sale of scrap was out-sourced by the Railways and the agreement *prima-facie* shows that it was the duty of the Railways to give the particulars of the lot. For sake of brevity, the relevant part of the agreement -1(a) is reproduced herein under :-

“1(a). That the Auctioneers shall conduct sales by Public Auction of Scrap, Unserviceable and Surplus Railway materials belonging to the Railway Administration, which may be entrusted to them from time to time by the Controller of Stores or other Executive Heads of the

Railway Administration on the entire system of the South Eastern Railway Administration.”

9. Further the general conditions of sale of auction which is operative in the Railways would show that clause – 7(a) takes note of ambit the nature of the complaint made and the goods in each lot are sold 'AS IS WHERE IS BASIS' and the description of any lot is merely indicative for identification thereby and no sale should be invalid for the reason of any defect or fault in any lot or any lot being incorrectly described. For sake of brevity, the clause- 7(a) is reproduced herein under :-

“7(a). Goods in each lot are sold on 'AS IS WHERE IS BASIS' and no warranty is given as regards size, quality, weight, description etc. The description of any lot is merely indicative and for identification thereof only and no sale shall be invalid by reason or any defect or fault in any lot or on account of any lot being incorrectly described and / or on account of the weight / size or approximate weight / size or any lot not sold by weight / size being incorrectly stated and the purchaser shall not be entitled to claim any damages or compensation whatsoever on account of such fault, error or description, weight, size or the like. To avoid any discrepancy, bidders must inspect the lot(s) as stated in clause 1(d) above.”

10. Likewise, clause-18 of agreement refers to arbitration in case of a dispute the goods dispute has to be referred to the Arbitrator. Clause-18 of the general clause is also reproduced herein under :-

“18. In the event of any question dispute or difference arising under these conditions or in connection with this contract (except as to any matter decision of which is specifically provided for any these condition) the same shall be referred to the sole Arbitrator of an arbitration appointed by the General Manager of the Administration. It will be no objection that the Arbitrator is a Govt. Servant and that in the course of his duties as Government servant he has expressed views on all or may of the matters in dispute of difference. Referred being transferred or vacating his office by resignation or otherwise or becoming unable to act for any reason, the General Manager as aforesaid at the time of such transfer vacation of office or inability to act shall appoint another person to act as an Arbitrator in accordance with the terms of this agreement. Such person shall be entitled to proceed from the stage at which it was left by his predecessor. The award of the Arbitrator shall be final and binding on the parties to this Agreement. It is further a terms of this contract that act as Arbitrator and that for any reason that is not possible, the matter need not be referred to arbitration at all.

The Arbitrator may time to time with the consent of all the parties to the contract enlarge the time for making the award. The venue of arbitration shall be as decided by the Arbitrator.

Subject as aforesaid the Indian Arbitration Act, 1940 and the Rules there under and the Statutory modification thereof shall apply to the arbitration proceeding in this clause.”

11. Therefore, taking note of account of the totality of the fact that

there is a clear finding given by one of the Court in respect of two accused that dispute referred were of civil nature. Certainly the present applicants who were also arrayed as an accused were entitled to hold the same umbrella for their protection. Consequently, the finding which has been given for one set of the accused would also be applicable to these applicants who were also arrayed as an accused. After taking consideration of the facts, I am of the opinion that the dispute referred in the complaint appears to be of civil in nature for which a criminal prosecution cannot be set forth and continuity of complaint would be an abuse of process of law.

12. Accordingly, the petition is allowed. The order of both the Courts below are set aside and the proceedings of the entire Criminal Case No. 74/2008 pending before the JMFC, Raipur is hereby quashed. The applicants are discharged.

Sd/-

(Goutam Bhaduri)
JUDGE