07.10.2021
Item No.7
Ct.No.34
dc.

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

C.R.R. 18 of 2012
(Via Video Conference)

Sri Pradeep Pradhan
versus
Dinesh Narayan Singh & Anr.

In Re: An Application under Sections 401 and 482 of the Code of Criminal Procedure, 1973.

Mr. Himanshu De,
Mr. Navanil De,
Mr. Rajeshwar Chakraborty ... For the Petitioner.

Mr. Swapan Banerjee,
Mr. Suman De ... For the State.

Mr. Subrata Bhattacharya ... For the Opposite Party No.1.

Affidavit-of-service filed in Court today be kept with the record.

There has been an oral submission on behalf of the State that service has been effected in compliance with the order dated 27.09.2021 and I find consequently Mr. Subrata Bhattacharya, learned advocate appears on behalf of the complainant/opposite party no.1.

This revisional application was preferred challenging the proceedings being C.R. Case No. 253 of 2011 under Section 406 of the Indian Penal Code pending before learned Additional Chief Judicial Magistrate, Durgapur.

The allegations made in the petition of complaint are set out hereunder in verbatim :

"*2. That the accused no.1 is an International company and is a principal contractor of Durgapur Steel Plant (SAIL) for some* *job. The accused no.2 is the Chief executive officer of accused no.1 who have an authority to represent the accused no.1. The accused no.3 is the departmental Incharge of accused no.1 having charge of Head office accounts. The accused no.4 is the charge officer of accused no.1 office situated at Kolkata.*

3. That in the year 2009 and from the month of March 2009 the accused no.1 got some job from the authority of Durgapur Steel Plant (SAIL) through tender as Principal contractor and for doing the said job as per specification at D.S.P. (SAIL) the accused no.1 appointed your complainant as a sub contractor under the authority of accused no.1.

4. That as per the job order No. 7726 P.O.No. 283/7726 dated 12-08-2009, Job order No. 7726, P.O. No. 270/7726 dated 19-08-2009, Job order No. 7726, P.O. No. 214/7726 dated 08-06-2009, Job order No. 7726, P.O. No. 253/7726 dated 07-08-2009, Job order No. 7726, P.O. No. 239/7726 dated 02-07-2009, job No. Nil P.O.No. 172 dated 09.03.2009 the accused no.1 offered your complainant a seize of work at Durgapur Steel Plant (SAIL) P.O. Durgapur-3, P.S. Durgapur, Dist. Burdwan total amounting to Rs.37,55,548.12 (Rupees thirty seven lakh fifty five thousand five hundred forty eight and paisa twelve only) and after comliation of the said seize job your complt. submits his all Bill in respect of the said seize of job under the authority of the accused no.1.

5. That after satisfaction of your complt's job and after verification of submitted bill the accused no.1 has been made payment amounting to Rs.23,50,000/- (Rupees twenty three lakh and fifty thousand only) till today by instalment.

6. That an the account of the said seize of job of Durgapur Steel Plant (SAIL) P.O. Durgapur, Dist. Burdwan W.B. your complainant have the outstanding amount with the accused No.1 amounting Rs.15,55,548.12 (Rupees fifteen lakh fifty five thousand five hundred forty eight and paisa twelve only) till today.

7. That from the date of 1st Sept. 2009 you complt. submits his payment breakup with the accused no.1 through the accused no.2 and requested then to release the said outstanding bill amount lying with the custody of the accused no.1 till today an various occasion but all are in vain.

8. That lastly on 05-04-2011 your complt. sent his demand notice through his Ld. Advocate Susanta Kumar Ganguly to all accused persons and the said notice were sent to all accused persons through registered post with A/D vide nos. RL A/544 & 545 & 546 dated 06-04-2011 from the City Centre Post office at Durgapur-16 and the said notice were received by all the accused persons on 12-04-2011 and this facts has been certified by the Department of posts India, Senior Superintendent of Post office Asansol Division, Asansol-713301 on 03-05-2011 and 19-05-2011.

9. That after received of the said demand notice all the accused persons are kept silent from their end and the said amount of Rs.15,55,548.12 (Rupees fifteen lakh fifty five thousand five hundred forty eight and paisa twelve only) is under the illegal custody of the accused No.1 to 4 till today *and they were enjoys the benefit of the said outstanding amount unauthorisedly.*

10. That by said illegal and unauthorised acts of the accused No. 1 to 4 committed the offence punishable U/S 406/120B Indian Penal Code."

Mr. Himanshu De, learned senior advocate appearing for the petitioner submits that if the allegations in the petition of complaint are accepted and considered to be true, then also no offence under Section 406 of the Indian Penal Code has been made out and paragraph 9 of the petition of complaint reflects that the case was initiated for recovery of dues in a transaction where out of Rs.37,55,548.12, a sum of Rs.23,50,000/- has been paid and the outstanding dues are Rs.15,55,548.12.

Mr. Bhattacharya, learned advocate appearing for the complainant, on the other hand, submits that the dues itself qualifying the offence has been made and the admitted position is that the accused from the very inception did not have the intention to pay the money.

I have considered the rival submissions and I find that the present case is covered by the judgment of the Hon'ble Supreme Court in ***Anil Mahajan Vs. Bhor Industries Ltd.*** **(2005) 10 SCC 228**. Reliance is placed in respect of paragraphs 8 and 9 of the said judgment which are set out as follows :

"***8.*** *The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no* *consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs 3,05,39,086 out of the total amount of Rs 3,38,62,860 was paid leaving balance of Rs 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.*

9. *In Alpic Finance Ltd. v. P. Sadasivan [(2001) 3 SCC 513 : 2001 SCC (Cri) 565] this Court was considering a case where the complainant had alleged that the accused was not regular in making payment and committed default in payment of instalments and the bank had dishonoured certain cheques issued by him. Further allegation of the complainant was that on physical verification certain chairs were found missing from the premises of the accused and thus it was alleged that the accused committed cheating and caused misappropriation of the property belonging to the complainant. Noticing the decision in the case of Nagawwa v. Veeranna Shivalingappa Konjalgi [(1976) 3 SCC 736 : 1976 SCC (Cri) 507] wherein it was held that the Magistrate while issuing process should satisfy himself as to whether the allegations in the complaint, if* *proved, would ultimately end in the conviction of the accused, and the circumstances under which the process issued by the Magistrate could be quashed, the contours of the powers of the High Court under Section 482 CrPC were laid down and it was held: (SCC p. 520, paras 10-11)*

"10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the

respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

Having regard to the settled principles of law, I am of the view that the transaction referred to in the petition of complaint merely makes out a case for breach of agreement and no case under Section 406 of the Indian Penal Code is made out. Consequently the petitioner cannot be asked to face the rigours of a criminal trial. Thus, all further proceedings arising out of C.R. Case No. 253 of 2011 under Section 406 of the Indian Penal Code pending before learned Additional Chief Judicial Magistrate, Durgapur are hereby quashed.

Accordingly, the revisional application being CRR 18 of 2012 is allowed.

Interim order, if any, is made absolute.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Tirthankar Ghosh, J.)