IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.R. No. 520 of 2018
(Via video conference)
Pradip Bagla @ Pradeep Kumar Bagla

Versus

M/s Duakem Pharma Private Limited

For the Petitioners	:	Mr. Ayan Bhattacharya, Adv. Mr. S.Haque, Adv. Mr. A R Tiwari, Adv.
For the Opposite Party	:	Mr. Supriyo Das, Adv.
Hearing concluded on	:	04-02-2021
Judgment on	:	04-02-2021

SUVRA GHOSH, J. :-

1. In the present revisional application, order dated January 12, 2018 passed by the Learned Metropolitan Magistrate, 20th Court at Calcutta in connection with C.S. Case No. 0117617 of 2016 under sections 420/120B of the Indian Penal Code is assailed.

2. The petitioner's contention, in a nutshell, is that the opposite party lodged written complaint against him and another before the Learned Chief Judicial Magistrate, Calcutta, alleging inter alia, commission of offence punishable under sections 420/120B of the Penal Code to the

effect that the petitioner, being the Director, Chief Executive and/or person in charge, in control and/or responsible for the affairs of the company in the name and style of M/s Farmvile Agrovet Ltd. (arrayed as an accused in the complaint) approached the complainant/opposite party company for supplying pharmaceutical items accompanied by assurance of prompt payment. Sensing the hesitance of the complainant company to supply goods on credit, the accused made an initial payment of Rs. 25,000/- (twenty five thousand only) following which the complainant company supplied goods valued at Rs. 1, 80,496/- to the accused company which were duly received by the latter in good condition and commercially utilised. After adjusting the initial payment of Rs. 25,000/- (twenty five thousand only) a sum of Rs. 1, 55,496/- was due and the complainant company made repeated demands for clearance of such dues. Upon failure of the accused company to keep its promise, the complainant issued notice to the accused company addressed to the petitioner through its learned advocate on 02-11-2015 which was received by the accused company on 03-11-2015 despite which the accused company failed and neglected to clear the dues. The complainant company, therefore, lodged complaint against the accused company and the petitioner under sections 420/120B of the Penal Code.

3. The case was transferred to the court of learned Metropolitan Magistrate, 20th Court, Calcutta and pursuant to issuance of summons, the petitioner appeared before the said court and filed an application praying for his discharge from the case under section 245 (2) of the Code of Criminal Procedure. Upon hearing the parties, the learned trial court rejected the prayer of the petitioner by the order impugned.

4. It is submitted on behalf of the petitioner that the petitioner is in no

way connected with the accused company and no offence has been made out against him in the complaint. The thrust of the allegation in the complaint is against the accused company and its Directors with whom the petitioner has no nexus whatsoever.

5. The petitioner has referred to a decision of this court in Jully Techi & Ors. Versus The State of West Bengal & Another reported in (2020)1 C Cr LR (Cal) 222 and Anu Mehta & Others v/s Gunmala Sales Private Limited & Another reported in (2015) 4 CAL LT 310 (HC) and has prayed for his discharge from the case under section 245(2) of the Code by setting aside the order impugned.
6. In raising serious objection to the contention of the petitioner, it is submitted on behalf of the opposite party that the petitioner posed himself to be the Director, Chief Executive, and/or person in charge, in control and/or responsible for the affairs of the accused company and approached the petitioner for delivery of goods in favour of the accused company on credit. Learned Counsel for the opposite party has further submitted that upon learning that the petitioner's son is one of the Directors of the company and the petitioner does not represent the company in any capacity, the opposite party has taken out an application before the learned trial court under section 319 of the Code praying for adding the Directors/office bearers of the company as accused in the case.
7. Referring to paragraph 11 of the complaint, learned counsel has stated that notice sent to the accused/petitioner by the complainant

company on 02-11-2015 was delivered to the petitioner on 03-11-2015 and e-mails and other communications with regard to the alleged transaction was made by the complainant with the accused/ petitioner who represented the accused company.

8. The petitioner appeared before the learned trial court pursuant to process issued upon him under section 204 of the Code and such process has not been challenged by the petitioner who in fact appeared before the court in compliance with the same. Learned Counsel has referred to the judicial authority in Bhushan Kumar and another v/s State (NCT of Delhi) and another reported in AIR 2012 Supreme Court 1747. In the said judgment, the Hon'ble Supreme Court has been pleased to observe that while issuing process under section 204 of the Code, the Magistrate should form an opinion regarding existence of sufficient ground for summons to be issued and explicit narration of the same is not mandatory.

9. The said principle is not disputed. But at the same time, the petitioner is not debarred from praying for discharge under section 245(2) of the Code merely on the ground that he chose not to challenge the order issuing process upon him under section 204 of the Code.

10. It is contended by the opposite party that it was the petitioner and none else who dealt with the opposite party in connection with the transaction in question and therefore cannot be absolved of the liability.

11. I have considered submission made on behalf of the parties as well as the documents placed before me.

12. It is candidly admitted on behalf of the opposite party that there is no document which suggests representation of the petitioner on behalf of the company and the petitioner was arrayed as an accused on the impression that he was the Director thereof.

13. The Master data of the accused company filed by the petitioner also discloses the name of the petitioner as the father of one of the Directors of the company Umang Bagla and it is needless to say that no liability pertaining to the company can be imposed upon the petitioner merely on the ground of his son being one of the Directors of the company. There is no document suggesting nexus or involvement of the petitioner with the company or its functioning.

14. The notice/e-mail/ correspondence of the complainant company may have been addressed to the petitioner but that does not necessarily indicate that the petitioner dealt with the same as authorised representative of the company or at all. Therefore allegation under section 420/120B of the Penal Code as made out in the complaint does not lie against the petitioner.

15. In Anu Mehta and others (supra) a Learned Single Judge of this court, relying upon the authority in State of Haryana v/s Bhajanlal, AIR 1992 SC 604 dealt with the essence of section 482 of the Code. It shall be useful to set out the relevant paragraph of the judgment:-

"Firstly, it must be understood that all defences and/or

documents in support thereof cannot be utilised by an accused under section 482 Cr. PC to improbabilise the basic averment that he was in control and in charge of the day-to-day affairs of the Company at the time of commission of the offence. The High Court under section 482 Cr. PC cannot hold a mini trial of all defences raised by an accused based on disputed questions of fact and the order of remand cannot be construed to vest such jurisdiction on the Court as the petitioners would like me to believe. It is only documents of sterling quality and unimpeachable nature which can be relied upon at this stage by an accused to quash a prosecution by establishing the basic averment in the impugned complaint is "patently absurd and inherently improbable" rendering the prosecution and abuse of process of Court as held in Category No. (5) of Para 108 of State of Haryana v. Bhajanlal, AIR 1992 SC 604."

16. In the other judgment relied upon by the petitioner, this court spelt out the extent to which the court can exercise inherent power to quash criminal complaint under section 482 of the Code.

17. In the present case, whether a prima facie case has been made out against the accused company in the complaint itself is beyond the scope of consideration in the present application, moreso, as the petitioner turns out to be an individual who cannot by any stretch of

imagination, be said to be associated with the accused company. It is crystal clear from the documents on record that the petitioner does not represent the accused company in any capacity and has no nexus with its administration, control and functioning. As such, continuation of the complaint against the petitioner shall be a futile exercise and shall amount to abuse of the process of court. The order impugned is misconceived and cannot be sustained in law.

18. Accordingly order dated 12-01-2018 passed by the Learned Metropolitan Magistrate, 20th Court at Calcutta in connection with C.S. Case No. 0117617 of 2016 is set aside.

19. The petitioner be discharged under section 245(2) of the Code.

20. The petitioner be released at once and discharged from his bail bond.

21. CRR 520 of 2018 is disposed of accordingly.

22. There will be no order as to costs.

23. A copy of this judgment be sent to the Learned Metropolitan Magistrate, 20th Court at Calcutta for information and necessary action.

24. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J.)