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September
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C.R.R. No.1360 of 2012
(Via Video Conference)

Sri Amal Mukhopadhyaya & Ors.
Versus
The State of West Bengal & Anr.

Mr. Prantick Ghosh.
...for the petitioners.

Mr. Bidyut Kumar Ray,
Ms. Manisha Sharma.
...for the State.

At the inception Mr. Bidyut Kumar Ray, learned advocate, files the certified copy of the orders of the learned Judicial Magistrate, 1st Court, Alipore which reflects that the trial could not proceed as the revisional application was pending before this Court.

Report along with the certified copy so submitted be kept with the record.

Learned advocate for the petitioners has filed the supplementary affidavit enclosing the death certificate of petitioner no.2. Let the same be kept with the record.

Learned advocate for the petitioners argues that the allegations made in the application under Section 156(3) of the Code of Criminal Procedure as well as the charge-sheet which have been submitted before the jurisdictional court reflect that the transactions arose out of contractual liability and, as such, the offences under Section 420 of the Indian Penal Code are not attracted. It has further been argued that if at all any funds have

been transferred, the same was in favour of Kalpana Mukherjee, petitioner no.2, who has expired. So far as the other petitioners are concerned, there are no allegations against them for the proceedings to continue before the learned trial court.

Learned advocate in order to substantiate his arguments relied upon **2020 AIR SC 765 (Sushil Sethi Vs. State of Arunachal Pradesh)**. The attention of this Court has been drawn to paragraph 7.2 onwards and emphasized that the present case is squarely covered by the said judgment. In the said judgment, the facts of the case reflect that there was a contract which was entered into between the Government and the private company for construction, supply and commissioning of hydel power project. As per clause 2(c) of the contract, the defect liability period for the works was to be for a period of 18 months. The project was commissioned in the month of July, 1996. The defect liability period for the works expired in the month of January, 1998. Thereafter, the project became operational and started generating electricity and till 20.09.1998 the project generated 90 lakhs KW units. The dispute was with respect to the payment of maintenance by the respondents. To that effect, a complaint under Section 420 of the Indian Penal Code was filed.

The next case relied upon by the petitioners is **Hridaya Ranjan Pd. Verma & Ors. Vs. State of Bihar & Anr. reported in 2000(3) Judgment Today 604**. The fact of the case is that the appellants agreed to sell the land for a consideration of Rs.16 lakhs. The respondents therein paid a sum of Rs.11 lakhs. On such

factual background, the case was registered for dishonour of three cheques and the case was registered under Sections 406/420/120B of the Indian Penal Code.

The judgments so relied upon by the petitioners are on a different set of factual background. The first one being on the issue of maintenance where the dispute cropped up and the second judgment was one where liability of the payment were made and part of the payment was ensured by different cheques which were dishonoured.

So far as the present case is concerned, the charge-sheet which has been the foundation for the challenge in the revisional application reflects statement of the bank accounts where the amount has been paid and received. The statement of the complainant as also the witnesses reflect that there were allurements for transferring majority stake of the petrol pump and by such misrepresentations the complainant was compelled to part with the money.

The revisional application is considered at a stage when the charge-sheet has been filed and the learned Magistrate has taken cognizance of the same. In the complaint as well as the charge-sheet, there are consistent statements in respect of the petitioner nos.1 and 3 along with the petitioner no.2 (who according to the supplementary affidavit has expired during the pendency of the revisional application). The factual circumstances and the materials which have been collected by the investigating agency at the time of submission of charge-sheet do not make out a case for

interference at this early stage when the representations are to be adduced by way of evidence before the trial court.

Having regard to the same, I am of the view that no interference is required at this stage.

Accordingly, CRR 1360 of 2012 is dismissed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Learned trial court is directed to proceed with the case and take the same to its logical conclusion within a reasonable period of time.

Needless to state that the observations made above are restricted to the disposal of the revisional application and the trial court should not be swayed by any of the observations made while deciding any issue addressed before the said court.

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

(Tirthankar Ghosh, J.)