

18.03.2021
Ct. No. 35
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C.R.R. No. 2664 of 2019
(via video conference)

In the matter of : Dipika Jhunjhunwala @ Dipika Agarwal
..petitioner

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Sourav Chatterjee
M. Ayan Bhattacharya
Mr. Anirban Tarafdar
Mr. Soumya Nag
..... for the petitioner

Mr. Anish Biswas
..... for the opposite party no. 2

Mr. S. G. Mukherjee, learned P.P.
Mr. Aniket Mitra
..... for the State

In the present application under Section 482 of the Code of Criminal Procedure the petitioner has prayed for quashing of proceedings being G.R. Case No. 843 of 2019 pending before the learned Additional Chief Metropolitan Magistrate – 1, Calcutta in connection with Shyampukur Police Station Case No. 129 of 2019 dated 19.07.2019 under Sections 403/406/420 of the Indian Penal Code.

Learned counsel appearing for the petitioner has submitted that the petitioner being the widow of late Rajesh Jhunjhunwala @ late Rajesh Agarwal, the sole proprietor/owner of Sonali Tea Estate, has stepped into the shoes of her husband

after his demise. She has been arrayed as an accused in a criminal case under Sections 403/406/420 of the Indian Penal Code on the basis of complaint lodged under Section 156(3) of the Code of Criminal Procedure by one Shiv Kumar Daga on 15.07.2019. In the said complaint, the complainant has stated that he supplied computers and computer peripherals to late Rajesh Jhunjhunwala @ late Rajesh Agarwal to the tune of Rs.25,52,829/- between April, 2013 and June, 2013 through several tax invoices and such supply was confirmed by the latter who made no complaint against supply of such goods. After demise of late Rajesh Jhunjhunwala @ late Rajesh Agarwal, his wife Dipika Jhunjhunwala @ Dipika Agarwal, petitioner herein, became the sole proprietor of the company and despite several requests for payment of dues, she has failed and neglected to clear the same. The complainant sent a demand notice to the petitioner through his learned advocate on 12.02.2019 claiming the due amount along with 12% interest thereon per annum which was not heeded to by the petitioner.

Learned counsel for the petitioner has further submitted that the petitioner had no knowledge of or involvement in the affairs of the company during lifetime of her husband and was not responsible for any such transaction which may have taken place between her husband and the complainant/opposite party no. 2. Criminal liability, if any, cannot be thrust upon the petitioner who was in no manner involved in the alleged transaction. There has been no entrustment of property to the petitioner or criminal

misappropriation thereof as is essential for an offence under Section 403/406 of the Indian Penal Code. No case under Section 420 of the Indian Penal Code has also been made out against her. As such the proceeding is liable to be quashed.

Learned counsel appearing for the State produces the case diary and refers to the seizure list which suggests that tax invoices of electric goods duly signed by Sonali Tea Estate were seized from the custody of the complainant/opposite party no. 2. Statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure in the course of investigation reveals that similar complaints have been made by others but the complaints have been directed against the company and prima facie involvement of the present petitioner is not found therefrom. The dates of alleged transactions between the witnesses and the company are also not found.

Learned counsel appearing for the opposite party no. 2 has reiterated his averments made in the complaint and has submitted that as the petitioner is the present proprietor of the company she is responsible for the alleged act and it shall not be proper to quash the entire proceedings against her at the initial stage of investigation.

It transpires from the documents placed on record that the previous proprietor, late Rajesh Jhunjhunwala @ late Rajesh Agarwal expired on 22.11.2014 after which the petitioner took charge as proprietor of the company. According to the complainant/opposite party no. 2, articles were delivered to M/s.

Sonali Tea Estate between April, 2013 and June, 2013 i.e. during the lifetime of late Rajesh Jhunjhunwala @ late Rajesh Agarwal, the then proprietor. There is no prima facie evidence on record which suggests that the petitioner was in any manner involved in the dealings of the company at the relevant time. Strangely, it was only in 2019 that the opposite party no. 2 decided to send a demand notice to the petitioner claiming the due amount. No reason has been assigned by opposite party no. 2 as to why such demand was not made during lifetime of the erstwhile proprietor.

It is trite law that jurisdiction under Section 482 of the Code of Criminal Procedure should be exercised with care, caution and circumspection and should not be used to axe down a legitimate prosecution. The test is whether allowing the proceedings to continue shall amount to abuse of the process of the Court.

In the present case, it is evident from the materials on record that the petitioner had no nexus with the dealings of the company at the relevant time i.e. between April, 2013 and June, 2013, when the alleged incident occurred. Her husband Rajesh Jhunjhunwala @ Rajesh Agarwal, since deceased, being the sole proprietor of the company, was responsible for any or every act performed on behalf of the company. No property was entrusted to the petitioner and question of misappropriation of such property or cheating does not arise. Therefore no criminal liability under Sections 403/406/420 of the Indian Penal Code can be attached to the petitioner in the present case and allowing the

proceedings to continue against the petitioner shall amount to abuse of the process of the Court.

Accordingly, the revisional application being CRR 2664 of 2019 is allowed.

There will be no order as to costs.

Proceedings being G.R. Case No. 843 of 2019 pending before the learned Additional Chief Metropolitan Magistrate – 1, Calcutta in connection with Shyampukur Police Station Case No. 129 of 2019 dated 19.07.2019 under Sections 403/406/420 of the Indian Penal Code is quashed.

Copy of this order be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Suvra Ghosh, J.)