

05.08.2021

Ct No. 34

SL. No. 6

PA

CRR 3045 of 2019
(Through Video Conference)

Anand Kothari
-Vs.-
The State of West Bengal & Anr.

Mr. Ayan Bhattacharjee,
Mr. Sharegul Haque,
Mr. Prattay Khan
....for the petitioner

Mr. Arindam Jana,
Mr. Soumajit Chatterjee
.... for the opposite party no.2.

Mr. Saswata Gopal Mukherjee, Ld. P.P.
Mr. Arijit Ganguly,
Mr. Sandip Chakraborty,
....for the State.

The present revisional application has been preferred against the judgment and order dated July 31, 2019 passed by learned Additional District Judge, Fast Track Court No.1, Alipore, South 24 Parganas in Cri. Motion No. 149 of 2018, wherein the learned Sessions Court while exercising its revisional jurisdiction affirmed the order dated January 18, 2018 passed by the learned Judicial Magistrate, 6th Court, Alipore, South 24 Parganas in connection with South Port Police Case No. 297 dated October 12, 2011 corresponding to C.G.R. No. 3756 of 2011 under Section 120B/406/420 of the Indian Penal Code.

The present petitioner preferred an application under Section 239 of Cr.P.C. praying before the Learned Magistrate for discharging them from the case. The learned Magistrate on consideration of the materials was pleased to refuse the same and being aggrieved by the said order the petitioner approached the Sessions Court thereby invoking its revisional jurisdiction and the learned Sessions Court was of the view that at the stage of consideration of charge, according to the materials on record and the contents of the Case Diary sufficient materials surfaced against the accused person and as such did not find any illegality committed by the learned Magistrate while passing the impugned order and as such affirmed the order passed by the learned Magistrate, thereby refusing the petitioner(s) to be discharged from the case.

The subject matter of the case relates to an advance payment of Rs.1.50/- crore advanced to the accused/petitioners being made by electronic mode on 30.01.2011, 18.01.2011 and 28.01.2011 for supplying of pulses and in spite of receipt of the said amount the accused/petitioners by entering into a criminal conspiracy refused to supply the pulses/yellow peas and also refused to refund the amount which was received by them. According to the complainant he has been dishonestly induced by the accused/petitioners and as such the accused persons not

only cheated him but also committed the offence of criminal breach of trust.

In course of hearing of the revisional application affidavits have been exchanged between the parties and in fact, the Case Diary has been perused by this Court. It is reflected from the ledgers which are part of the record of the case that there were continuous business transactions between the company belonging to the petitioners and that of the complainant. Records also reveal that the total transaction entered into by the petitioners and the complainant/opposite party are more than eight/nine occasions and it is the last transaction only wherein the petitioners have failed to keep up to their commitments for supply of the yellow peas/pulses as alleged.

Moreover, it is seen that the total transaction was more than Eight Crores Rupees. Having regard to the settled principles of law that there is a difference between cheating/criminal breach of trust/breach of agreement and if in a commercial transaction there are number of transactions which have taken place and the majority of commitments have been honoured and only because of failure to keep up to a subsequent promise an individual is impleaded in a criminal case the same should not be allowed to continue.

In view of the aforesaid, I am of the opinion that the further continuance of South Port Police Case No. 297 dated October 12, 2011 corresponding to C.G.R. No. 3756 of 2011, presently pending before the learned Judicial Magistrate, 6th Court, Alipore, South 24 Parganas, is an abuse of the process of the Court as the same is a commercial dispute which has been converted into a criminal case, accordingly the said proceedings before the learned Judicial Magistrate, 6th Court, Alipore, South 24 Parganas is hereby quashed.

Consequently the order dated July 31, 2019 is set aside.

Mr. Jana, learned Advocate appearing for the complainant has brought on record by way of supplementary affidavit-in-opposition certain documents by which Mr. Jana contends that these documents were not collected by the Investigating Agency in course of investigation from which it would reflect that the days on which the petitioners collected the sum of Rs.1.5/- crore by that time they have removed all the yellow peas and did not have yellow peas/pulses in their custody. To that effect other persons from whom the accused persons in this case collected money have also made similar complaints and cases have been registered in different police stations.

In view of the submissions so made by the learned Advocate for the complainant/opposite party and the proposition of law as spelt out by the Hon'ble Supreme Court in **Pramatha Nath Taluqdar -Vs. - Saroj Ranjan Sarkar** reported in **AIR 1962 SC 876**, I am of the opinion that the complainant will be at liberty to prefer a complaint case before the learned Magistrate on the basis of the new materials which are in his custody presently. The learned Magistrate will be at liberty to assess the materials and thereafter would consider whether a case has been made out for issuance of process.

The learned Magistrate apart from the aforesaid judgment of the Hon'ble Supreme Court would also take into account the judgment of **Jatinder Singh and Ors. -Vs. - Ranjit Kaur** reported in **(2001) 2 SCC 570**, **Poonam Chand Jain and Anr. -Vs. - Fazru** reported in **(2010) 2 SCC 631** and **Samta Naidu and Anr. -Vs. - State of Madhya Pradesh and Anr.** reported in **(2020) 5 SCC 378** before issuance of process.

State is directed to hand over copies of the documents which were collected in course of investigation to the complainant and if any original is in custody of the State, the complainant will be at liberty to take out proper application for directing the learned Magistrate to release

the same in near future for the interest of the complaint case which they would prefer, if so advised.

With the aforesaid observations C.R.R. No. 3045 of 2019 is allowed.

Pending Applications, if any, is consequently disposed of.

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

(Tirthankar Ghosh, J.)