

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 3375 of 2019

**Krishnendu Ghosh & Anr.
Vs.
State of West Bengal & Anr.**

For the Petitioners	:Mr. Rajdeep Mazumder, Adv. Mr. Moyukh Mukherjee, Adv. Mr. Abhijit Singh, Adv.
For the Opposite Party No. 2	:Mr. Pawan Kr. Gupta, Adv. Mr. Tapas Kumar Dey, Adv. Mr. Nirupam Sarkar, Adv.
For the State	:Mr. Saswata Gopal Mukherji, Ld. P.P. Mr. Arijit Ganguly, Adv.
Heard on	: 29.01.2021
Judgment on	: 09.02.2021

Subhasis Dasgupta, J:-

1. The court is approached under Section 482 of the Code of Criminal Procedure for quashing of a proceedings in connection with G.R. Case No. 5918 of 2019, arising out of Baruipur Police Station Case No. 1929 of 2019, dated

23.08.2019, under Sections 406/420/506 of the Indian Penal Code, now pending before the learned Chief Judicial Magistrate, Baruipur.

2. Learned advocate for the petitioners submitted that neither for non-realization of dues, nor settlement of accounts, nor delayed payment, would attract criminal liability, so as to fasten the petitioners in a criminal prosecution under Sections 406/420/506 I.P.C.

3. According to learned advocate for the petitioners, the contention depicted in the F.I.R. being founded upon a commercial transaction between the parties, the de facto complainant/opposite party no. 2 should have resorted to civil action for his desired relief pointing towards settlement of dues before a competent authority of civil jurisdiction.

4. Learned advocate for the petitioners further contended that the instant criminal proceedings being essentially a dispute, civil in nature, where civil remedies are available, the same should be quashed bearing in mind that the dispute being civil in nature, should not be allowed to become subject matter of criminal proceeding, as a short cut method for obtaining speedy relief, and taking the advantage of instant criminal prosecution, petitioners could not be forced to settle the unsettled accounts, as proposed by the de facto complainant/opposite party no. 2, thereby giving an unlawful gain to the de facto complainant/opposite party no. 2.

5. Learned advocate for the petitioners, while proposing for quashment of the pending proceeding, strenuously submitted that upon reading the entire contents of the F.I.R., dishonest intention neither could be seen to exist, nor

could be inferred, in as much as the entire dispute was principally directed towards a failure of business obligation between the parties.

6. Argument was raised by learned advocate for the petitioners that dishonest intention to deceive another person being the crux of the offence under Section 420 I.P.C., which must be shown to exist at the very beginning, i.e., when the relevant business transaction was held between the parties, and such dishonest intention on the part of the petitioner could never be found to exist at the very inception, if the allegations depicted in the complaint, were taken at their face value, and accepted in their entirety.

7. Adverting to copy of F.I.R., submitted to Officer-in-Charge of concerned police station on 25.09.2019, learned advocate for petitioners proceeded to establish that complaint submitted to police station would reveal alleged commission of offence under Sections 406/420/468 I.P.C. etc. by opposite party no. 2 (de facto complainant) and persuaded the court to believe that it was not the petitioners, but opposite party no. 2 himself cheated the petitioners during the course of such business relationship.

8. Upon referring such proposition of law together with the grounds referred above, learned advocate for the petitioners proposed for quashment of the proceeding, now under investigation.

9. Learned advocate representing State/opposite party challenged the contention, raised by the petitioners, submitting that it would not be proper to exercise the extraordinary authority of the court under Section 482 Cr.P.C. for

quashing the proposed proceeding at this stage, because investigation had not been concluded.

10. According to learned advocate representing State, the instant case would be maintainable in criminal jurisdiction, irrespective of civil remedy available under the relevant provision of law.

11. Learned advocate representing the opposite party no. 2, however, countered the submission of the petitioners canvassing that the presence, or absence of culpable criminal intention on the part of the petitioners would not be ascertainable at this stage, which might be ascertainable in course of trial, subject to collection of *prima facie* materials during investigation.

12. Drawing attention to Para-2 of F.I.R. dated 28.05.2019, learned advocate for the opposite party no. 2 submitted that the dishonest intention would be very much available from the averments contained in the F.I.R., as the petitioners winded up their Diamond Harbour office suddenly without clearing the outstanding amount, payable to opposite party no. 2, accumulating to more than Rs. 20 Lakhs, in respect of which bills had been raised long before by the de facto complainant, after performing his contractual obligation being a sub-contractor, engaged by the petitioners, who are involved in infrastructural development with specific focus on rural electrification in connection with a scheme of WBSEDCL: BRGF.

13. It was sought to be established that instant criminal prosecution should not be thwarted at the initial stage, because of availability of civil remedy. Submission was raised by the learned advocate for the opposite party no. 2 that

even presence of the arbitration clause in connection with a commercial transaction held between the parties, would not debar a criminal prosecution from being instituted for appropriate remedy, irrespective of civil remedy available.

14. Upon taking such grounds, opposite parties proposed for dismissal of the prayer for quashment of the proceedings.

15. Admittedly, parties are in business relationship. Upon reading the complaint, addressed to the Officer-in-Charge of the concerned police station, it appears that allegations were there, that in spite of having discharged the business obligation by opposite party no. 2, after being engaged as a sub-contractor by the petitioners, the bills raised by opposite party no. 2 remained unpaid for the reasons best known to the petitioners.

16. The instant case was registered in police station on 23.08.2019, at the instance of opposite party no. 2 (de facto complainant), while the case of the petitioners impleading complainant/opposite party no. 2, as accused came to be registered in police station on 25th September, 2019. It is thus clear that for the business dispute between the parties, two different cases came to be instituted at two different times.

17. Since the entire argument of learned advocate for the petitioners was emphasised on the civil nature of dispute being involved in this case pertaining to settlement of dues in course of business relationship with the obvious object for expeditious recovery of alleged outstanding amount of more than Rs. 20 lakhs, the instant prosecution should be quashed in order to prevent abuse of

the process of court, and also for the ends of justice; the court is thus, in the given circumstances, is required to address a pertinent question, whether merely because a civil claim is maintainable from the facts and circumstances, as narrated in the complaint, can the instant criminal prosecution be maintainable in criminal jurisdiction over the selfsame allegation, so as to accede to the proposed quashment.

18. According to petitioners, the entire gamut of the prosecution is for recovery of dues i.e. for settlement of the dues, pursuant to the alleged bills being raised for the purpose, while continuing a business relationship between the parties.

19. Referring a decision reported in **2018 (13) SCC 374**, delivered in the case of **Medmeme, LLC & Ors. Vs. Ihorse BPO Solutions Private Limited**, learned advocate for the petitioners submitted that the allegations contained in the complaint directed to a civil jurisdiction, and no *prima facie* case under Sections 406/420/506 I.P.C. could be found to be made out. Ratio of such decision was sought to be applied proposing that averments of the complaint would give a clear impression that it was primarily a case, founded upon breach of business obligation, leading to accumulation of an alleged outstanding amount of more than Rs. 20 lakhs, payable to the complainant/opposite party no.2. Probable reason for non-payment of the outstanding amount, according to petitioners, might be had from the complaint, submitted by petitioners against the de facto complainant/opposite party no.2, alleging commission of offence punishable under Sections 406/420/468 etc. and thereby creating a strong say against the case of de facto complainant/opposite party no. 2.

20. More so, there was no culpable intention on the part of petitioners, when business transaction was held, so as to deceive the complainant, leading to accumulation of alleged huge outstanding amount.

21. Profit was sought to be obtained by petitioners referring a further decision reported in **(2011) 13 SCC 412**, rendered in the case of ***Thermax Limited & Ors. Vs. K.M. Johny & Ors.***, in order to establish the offence complained of against the petitioners, having yielded a flavour of civil action, would not be amenable to the criminal jurisdiction. The dishonest intention, being one of the essential ingredients of offence, on the part of petitioners having remained missing at the beginning of transactions, the same even could not be inferred from the entire materials contained in the F.I.R., which might be a case of mal-discharge of business obligation in terms of their commercial relationship between the parties.

22. Private opposite party no. 2 reacted to such citations, referred above, opining that the ratio of the decisions, would not applicable in the given set of facts, irrespective of the civil remedy, that might be available for an independent remedy, not akin to the relief proposed from criminal court after a full trial, subject to proof of offence before a court of law during trial.

23. In order to challenge the issue now under reference, the learned advocate for the opposite party no. 2 proceeded to refer decisions reported in **(2000) 3 SCC 269** delivered in the case of ***Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd. & Ors.***, **(2001) 2 SCC 17** delivered in the case of ***Lalmuni Devi (Smt) Vs. State of Bihar & Ors.***, **(2002) 1 SCC 555** delivered in the case

of ***Kamaladevi Agarwal Vs. State of West Bengal & Ors., (2009) 11 SCC 529*** rendered in the case of ***Ravindra Kumar Madhanlal Goenka Vs. Rugmini Ram Raghav Spinners Private Limited***, in order to establish that the complaint addressed to the police station having contained *prima facie* materials available against the petitioner, the proposed quashing should not be entertained in the instant case now pending investigation, wherein investigating agency should be bestowed with the freedom to go into the whole gamut of allegation raised in the complaint, and thus it would not be justified to stifle a legitimate prosecution.

24. Decisions cited above by the parties are the broad principles of law in criminal justice delivery system, as propounded by Apex Court in such cases.

25. Merely because a civil claim is maintainable, can never be construed that a criminal complaint will not be maintainable. There cannot be any dispute that even the presence of any arbitration clause in connection with a commercial dispute, will not *ipso facto* thwart a legitimate criminal prosecution, subject to proof of ingredients available under Sections 406/420 I.P.C.

26. The two remedies, one available in civil jurisdiction, and another from criminal court, are not mutually exclusive, but clearly co-extensive and essentially differ in its contents and consequence.

27. Alternatively it may be put in this way, that the two types of actions are quite different in content, scope and import. It would be against the conscious reasonings to assume that when a civil remedy is available, a criminal prosecution will be completely barred. What is required is if the allegations

contained in the complaint, even if they are taken in their face value, and accepted in their entirety, do that allegations *prima facie* constitute an offence or make out the case alleged against the petitioners/accused persons, or not.

28. It is seen from the averments contained in the F.I.R., that it is purely a business dispute, alleging mal-discharge of business obligation leading to accumulation of alleged outstanding amount, for the recovery of which, the complainant had to face unwanted consequence, and harassment also, when there was a demand of giving 50% kickback of the outstanding amount at the instance of petitioners to the complainant, to which the complainant was not agreeable.

29. More so, there is disclosure in the complaint that during the course of business relationship between the parties, there was not only part payment, but delayed payment also in respect of the bills previously raised by the complainant/opposite party no. 2. Significantly the office of the petitioners situated at Diamond Harbour, wherein the complainant had submitted his bills, was closed subsequently shifting to elsewhere, and thereby leaving the unsettled dues, payable to opposite party no. 2, what is suspected to have largely contributed the required dishonest intention of petitioners for deceiving the complainant/opposite party no. 2. The pertinent question is, should the reasons behind shifting be only restricted solitarily to culpable intention of petitioners, as proposed, or to some others.

30. What is significant for the court to consider is whether such shifting of office of Diamond Harbour was at all sufficient to reveal the dishonest intention

on the part of the petitioners. There may be several probable reasons in respect of shifting of any office, which can hardly be straightjacketed, exemplifying the same. It is evident from the F.I.R. that during the course of business relationship, making part payment or delayed payment was also in practice, and the de facto complainant had accepted the same for the reasons best known to him. Giving a narrow or restrictive look to the reasons of shifting, in the absence of anything others to the contrary, will not be justified, so as to squeeze out the alleged dishonest intention of petitioners.

31. It is true that while exercising authority available under Section 482 Cr.P.C., the court is not obliged to embark upon an enquiry in respect of the materials produced before it, but for the purpose of ascertaining a *prima facie* case to have been established or not, the court is obliged to look into the averments and other materials produced, simply for ascertaining a *prima facie* case, and thereby limiting the vision to that extent only.

32. From the materials already contained in the Case Diary, it appears that de facto complainant/opposite party no. 2 having shown his interest in facilitating, erection, testing and commissioning of installation, and service connection to prospective customers, for rural electricity infrastructure and household electrification of village covered in South 24 Parganas, district of West Bengal under Backward Region Granted Fund Scheme (BGRF), he was appointed as sub-contractor under petitioners.

33. Pursuant to the bills claiming outstanding amount being raised for the purpose, there was communication requiring complainant/opposite party no. 2

to furnish detailed reconciliation statement for retention of Rs. 23 lakhs against the actual work, showing different components therein, which however, remained unanswered.

34. While inviting reconciliation statement from complainant/opposite party no. 2, some allegations were also levelled against the complainant/opposite party no. 2. The situation is thus clear that the unsettled due was sought to be recovered for an apparent business dispute pending between the parties.

35. One of the settled principles, pertaining to the prayer for quashment is that a complaint may be quashed, where the allegations made in the complaint, even if they are taken at their face value, and accepted in their entirety, do not constitute *prima facie* case, or make out a case, as alleged against accused.

36. While making appropriate exercise for the purpose, neither a detailed enquiry, nor a meticulous study of the materials, nor an assessment of the reliability, nor genuineness of the complaint, is warranted.

37. As has already discussed that the entire gamut of the prosecution is founded upon non-realization of dues, or non-settlement of accounts, even after closing down the business office of petitioners from Diamond Harbour, leaving a huge outstanding amount payable to the complainant/opposite party, so it would hardly make out a case, as alleged under Sections 406/420/506 I.P.C. against petitioners.

38. It is thus very significant to reveal that at the time of entering into the business relationship, and also at the time of accepting part payment, or delayed

payment, when there was a good going between the parties, there was no culpable intention on the part of the petitioners to cheat the complainant.

39. The subsequent generation of criminal intention on the part of the petitioners, as alleged to have been arisen on the part of the petitioners by reason of shifting the business office of the petitioners to elsewhere, what was much more stressed upon by the opposite parties in course of hearing, would be of no consequence, because such criminal intention was missing, when the business transaction was held between the parties.

40. There was no wrong, as regards the institution of a criminal case irrespective of civil remedy available on the facts narrated, but continuance of such proceedings would not be justified, and this is such a case, where pre-emption of investigation would be justified, for the extreme peculiarity of the circumstances involved in this case.

41. For the discussion made hereinabove, the court is not impressed with the points raised by the opposite parties that the investigation be conducted expeditiously for an effective trial to unearth the contention set out in the F.I.R.

42. Though proposal was made at the instance of de facto complainant/opposite party no. 2 that the instant case and the case pending against the complainant, alleged by the petitioners be clubbed together, but upon perusal of the materials contained in the complaint, it may be reasonably concluded that the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, will not *prima facie* constitute a case or make out a case, as alleged against the petitioner.

43. The revisional application succeeds. The pending proceedings in G.R. Case No. 5918 of 2019, arising out of Baruipur Police Station Case No. 1929 of 2019, dated 23.08.2019, under Sections 420/406/506 of the Indian Penal Code stands quashed, as against the petitioners/revisionists.

44. With this observation and direction, the revisional application stands disposed of.

45. Office is directed to communicate this order to Court below without making any delay. The copy of Case Diary be returned forthwith.

46. Urgent photostat certified copy of this judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Subhasis Dasgupta, J.)