24-03-2022
Subha
Item-22
Ct -.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 122 of 2020

In Re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

In the matter of : ***Swati Sultania & Anr.*** …Petitioners.

Mr. Kushal Mukherjee
……for the petitioners.

Mr. Abhra Mukherjee
Mr. Sudip Banerjee
Mr. Sauradeep Dutta
…..for the opposite party.

The present revisional application has been preferred challenging the proceedings arising out of Complaint Case No. 1154C/2018 under Sections 420/406/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 3rd court, Malda.

One Sujit Kumar Poddar filed a complaint under Section 200 of the Code of Criminal Procedure, inter alia, contending as follows:-

The complainant is the proprietor of *M/s. Rudra Traders* which dealt with dishwash and detergents along with other materials. The accused persons namely, Swati Sultania and Sumit Sultania were associated with M/s. Sultania International who were supplier and manufacturer of such dishwash and detergents. An agreement was entered into by and between the complainant and the accused had a long business relationship which continued between them. The complainant alleges that by way of a security deposit, a blank cheque was entrusted to the accused persons as per the agreement. The accused persons suddenly sent huge quantity of products of dishwash and detergents to the complainant which the complainant objected while receiving, but the accused persons did not turn up and as a result of which the said products were damaged in the godown of the complainant. Subsequently, the complainant requested the accused persons to settle the matter as early as possible, but they refused to do the same and in the meantime, a notice was issued at the instance of the accused persons and thereafter a case being CNS 369 of 2017 was filed before the learned Metropolitan Magistrate, 18th Court, Calcutta under Section 138 of the Negotiable Instruments Act. The complainant alleges that the accused persons committed breach of trust and cheated the complainant by manipulating the complainant's cheque by way of inserting huge amount in the blank cheque.

On such compliant being filed, the learned Chief Judicial Magistrate, Malda was pleased to take cognizance of the offence and transferred the case to the learned Judicial Magistrate, 3rd court, Malda. By an order dated 14.02.2019, the learned Judicial Magistrate, Malda after examining the complainant and its witness under Section 200 of the Code of Criminal Procedure was pleased to issue process against the present petitioners under

Section 420 of the Indian Penal Code.

Learned advocate appearing on behalf of the petitioners has drawn the attention of this court to the records of Complaint Case No. CNS 369 of 2017, which was filed before the learned Chief Metropolitan Magistrate, Calcutta and was subsequently transferred to the learned Metropolitan Magistrate, 18th court, Calcutta and the learned Metropolitan Magistrate, 18th court, Calcutta after compliance with the necessary provisions of law was pleased to issue process against the complainant/opposite party under Sections 138/141 of the Negotiable Instruments Act.

Learned advocate for the petitioners submits that the case before the learned court at Malda was a counterblast to the proceedings under Sections 138/141 of the Negotiable Instruments Act and is noway maintainable as per the settled provisions of law.

Mr. Abhra Mukherjee, learned advocate for the complainant/opposite party resists such submission advanced by the learned advocate for the petitioners and submits that the petitioners approached this court at a very initial stage and the complainant would be deprived of adducing its evidence in case there is any interference by this court.

Additionally, the learned advocate submits that the allegations made in the petition of compliant accepted in its entirety, do make out a case for trial warranting that the complainant's evidence must be placed before the court and appreciated instead of being scuttled at the very inception.

In view of the settled proposition of law, as has been pronounced by the Hon'ble Supreme Court in case *of Sunil Kumar –Vs- Escorts Yamaha Motors Ltd. and Others reported in 1999 Supreme Court Cases(Cri) 1466,* the relevant portion of which is as follows:-

> "*The attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under Section 138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it would tantamount* to an abuse of the *process of court.*"

The same view was approved by the Hon'ble Supreme Court in *Mahindra & Mahindra Financial Services Limited & Anr.*, reported in (*2009) 1 Supreme Court Cases (Cri) 603*.

This court is of the opinion that the further continuance of the proceedings, as such, would be an abuse of the process of the court thereby calling for interference.

Thus, the Complaint Case No. 1154C of 2018 under Sections 420/406/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 3rd court, Malda as also the orders passed therein should be quashed.

Accordingly, the revisional application being CRR 122 of 2020 is allowed.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, if any, is hereby made absolute.

All parties are to act in terms of a website copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)

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