

31.08.2022

Item No. 1

Ct. No. 40

CRR 221 of 2011
Saranjit Singh and Anr.
Vs.
The State of West Bengal and Anr.

Mr. Debabrata Acharyya,
Mr. Sital Samanta.

... for the Petitioners.

Mr. Abhra Mukherjee,
Ms. Manisha Sharma.

... for the State.

Mr. Satadru Lahiri.

... for the Opposite Party No. 2.

The instant application is filed under section 482 of the Code of Criminal Procedure praying for quashing of the proceeding being B. G. R. No. 5896 of 2009 connected with Tiljala Police Station Case No. 372 dated 15/11/2009 pending in the Court of the Chief Judicial Magistrate, Alipore, South 24 Parganas alleging commission of offences punishable under sections 120B/420/403/406 and 34 of the Indian Penal Code.

Petitioner No. 1 of the instant revisional application is a qualified mechanical engineer running a proprietorship concern of the name and style of M/s. Madan Motor Repairing Service. The Petitioner No. 2 runs a sole proprietorship business of the name and style of M/s. R.J. Grinding Works. During pendency of the present application the Petitioner No. 2 expired.

Genesis of the case is the application filed under section 156 (3) of the Code of Criminal Procedure in the Court of Additional Chief Metropolitan Magistrate, Calcutta by and on behalf of M/s. Panch Sheel Traders. It is in the complaint that the Complainant concerned deals in industrial, earth moving marine engine, generating set and spares, pumping set. In the month of September, 2003, the Petitioner No. 1 visited the shop of the Complainant and induced to deliver one crank shaft of Kirlosker WBV Engine for testing and checking. The present Petitioner duly received the machine on 11/09/2003, worth of Rs. 1,8000/- which the Petitioner was supposed to return urgently. On July 8, 2009 when the present Opposite Party No. 2 went to bring back the machine the present Petitioner No. 1 became furious. Therefore, the Opposite Party No. 2 was constrained to initiate criminal prosecution by filing the complaint under section 156 (3) of the Code of Criminal Procedure.

The Additional Chief Metropolitan Magistrate, Calcutta passed an Order under which a Burtolla Police Station Case No. 310 dated 16/08/2009 was initiated which was subsequently transferred to Tiljala Police Station for investigation and was renumbered as Tiljala Police Station Case No. 372 of dated 15/11/2009. The matter became under jurisdiction of Additional Chief Metropolitan Magistrate, Alipore.

Mr. Acharyya appearing for the Petitioner submitted that admittedly the machine in question was handed over on 11/09/2003 for urgent servicing and the First Information Report was lodged on 15/11/2009 after lapse of more than six years. Inordinate delay is not explained, although it was initially stipulated that the machine was to be returned urgently. This inordinate and unexplained delay not only dilutes

the allegation as pleaded but also brings the matter within the ambit of limitation under section 468 of the Code. It is further argued that the written complaint, *prima facie*, does not disclose any commission of offence. It is further submitted by Mr. Acharyya that Complainant himself was asked several times to submit documents by the investigating agency as stated in the charge sheet, but the Complainant failed to do that making the allegation baseless and unsubstantiated. Relying on the principles laid down by the Supreme Court of India in the **State of Haryana and Ors. Vs. Bhajan Lal and Ors. (1992 Supreme Court Cases (Cri) 426 1992 Supp (1) SCC 335**. Mr. Acharyya submitted that the allegations, *prima facie*, are so absurd and improbable that the pending prosecution should be quashed. Mr. Acharyya also relied upon the findings of the Supreme Court of India in **Dalip Kaur & Ors. Vs. Jagnar Singh and Anr. (2010) 2 Supreme Court Cases (Crl) 223, Suresh Vs. Mahadevappa Shivappa Danannava & Anr. (2005) 3 Supreme Court Cases 670 and M/s. Thermax Ltd. & Ors. Vs. K.M. Johny & Ors.**

According to Mr. Samanta it is a fit case where the jurisdiction of this Court should be exercised under section 482 of the Code of Criminal Procedure nipping at bud a frivolous and baseless litigation.

Per contra Mr. Lahiri, appearing for the Opposite Party No. 2 submitted that the complaint clearly reveals a, *prima facie*, offence of cheating. A cheating is a continuous offence for which law of limitation, contemplated in section 468 of the Code of Criminal Procedure is not applicable. There are, *prima facie*, material very strongly indicating commission of an offence. According to Mr. Lahiri it is not a fit case to exercise jurisdiction under section 482 of the Code of Criminal Procedure.

He relies upon the ratio of **Rajesh Bajaj Vs. State NCT of Delhi and Others (1999) 3 Supreme Court Cases 259**, **MEDCHL Chemicals & Pharma (p) Ltd. Vs. Biological E. Ltd. & Ors. (2000) 3 Supreme Court Cases 269**, **Harnam Singh Vs. Everest Construction Co. & Ors. (2004) 6 Supreme Court Cases 754**, **Skoda Auto Volkswagen (India) Private Limited Vs. State of Uttar Pradesh & Ors. (2021) 5 Supreme Court Cases 795**, **State of Karnataka Vs. M. Devendrappa & Anr. (2002) 3 Supreme Court Cases 89**, **State of M.P. Vs. Awadh Kishore Gupta & Ors. (2004) 1 Supreme Court Cases 691**

Abhra Mukherjee & Ms. Manisha Sharma produces the case diary. Inviting my attention to the statements of witnesses and other materials it is submitted on behalf of the State that it is not a fit case for quashing as, *prima facie*, incriminating materials are there against the Petitioner.

I have heard rival submission.

The Case Diary contains statements of witnesses including the employees of M/s. Panch Sheel Traders. The present Opposite Party No. 2 is also authorized representative of the said M/s. Panch Sheel Traders. Statements of witnesses are contradictory on handing over the concerned machine. Contradictory statements create a doubt on handing over the machine. All the disputed questions of facts can be looked into in course of the trial proceeding. At present, the available materials, *prima facie*, do not indicate an improbable or fantastic allegation. It is not a proper stage to jump upon any conclusion or comment on factual situations which are to be established on evidence. Such an exercise would pre-judge the matter.

Therefore, it is not a fit case to quash the pending prosecution with aid of section 482 of the Code.

Accordingly, the instant application filed under section 482 of the Code stands dismissed.

No order of cost.

Case Diary be returned.

(Sugato Majumdar, J.)