

D/L 42
April 26,
2022
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C.R.R. No.418 of 2020
With
CRAN 1 of 2021

In Re: An application under Sections 401/397 read with Section 482 of
the Code of Criminal Procedure;

M/s. Navayuga Engineering Co. Ltd. & Ors.
Versus
Md. Sirajuddin

Mr. Ayan Bhattacharjee,
Mr. Anirban Dutta,
Mr. Kausik De,
Ms. Mohini Majumdar,
Mr. Raghav Munshi.
...for the petitioners.

Mr. Upendra Roy,
Mr. Sunny Nandy,
Mr. Tamal Singha Roy.
...for the opposite party.

The present revisional application has been preferred
challenging the proceedings being Complaint Case No.C-3491 of
2019 under Sections 422/120B/34 of the Indian Penal Code
pending before the learned Judicial Magistrate, 4th Court, Alipore.

Mr. Ayan Bhattacharjee, learned advocate appearing for
the petitioners draws the attention of this Court to the petition of
complaint and submits that a contractual obligation in respect of
parking charges, detention charges and transport/transportation
charges are the subject matter of the petition of complaint and the
allegations made in the petition of complaint were for recovery of
outstanding.

Mr. Upendra Roy, learned advocate appearing for the complainant resist such submission and contends that the complainant has been victimised although he has performed his part of the duty and suffered financial loss. Learned advocate also emphasizes on the fact that the provisions relating to Section 422 of the Indian Penal Code is made out as the accused company by its act has in fact deterred the complainant to recover its dues.

I have perused the contentions and the allegations made in the petition of complaint.

Paragraph 5 of the petition of complaint refers to dues of Rs.20,76,200/- (Rupees Twenty Lakhs Seventy Six Thousand and two Hundred) only and paragraph 6 of the petition of complaint is set out as follows:

“6. That the very conduct of the accused persons leaves no manner of doubt that the accd. persons willfully and deliberately entered into a criminal conspiracy among themselves and in furtherance with their common intention have cheated your petitioner for the said sum of Rs.20,76,200/- (Rupees Twenty Lakhs Seventy Six Thousand and two Hundred) only and thereby the accd. persons have committed offence punishable u/s.422/120B/34 I.P.C. and are liable to be punished accordingly.”

On an appreciation of the submissions advanced by the rival parties as well as the allegations made in the petition of complaint along with the documents relied upon by the

complainant, I am of the opinion that the present case is one of outstanding, refund and non-payment which arose out of contractual obligation.

Having regard to the same, I am of the opinion that the present case is a contractual/civil dispute, which has been given a cloak of a criminal proceedings. Thus, the continuance of the proceedings should be thwarted and, as such, the proceedings being Complaint Case No.C-3491 of 2019 under Sections 422/120B/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 4th Court, Alipore, is hereby quashed.

Consequently, CRR 418 of 2020 is allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

The complainant will be at liberty to exhaust his remedy before the appropriate forum and no forum should be prejudiced by any of the observations made by this Court.

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

(Tirthankar Ghosh, J.)