Form J(2) **IN THE HIGH COURT AT CALCUTTA**

Criminal Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Bibek Chaudhuri

CRR 492 of 2021

M/s. Lionsec and Mac Escorts (P) Ltd.

Vs.

The State of West Bengal

For the petitioner : Mr. Tarique Quasimuddin, Adv.,
Mr. Nasir Quasimuddin, Adv.,
Ms. Sanchita Chaudhuri, Adv.

For the State : Mr. Ranabir Roychowdhury, Adv.,
Mr. Sandip Chakraborty, Adv.,
Mr. Mainak Gupta, Adv.

Heard &
Judgement on : 22.06.2022.

Bibek Chaudhuri, J.

An application under Section 156(3) of the Code of Criminal Procedure filed by the petitioner before the Learned Chief Metropolitan Magistrate, Calcutta with a prayer to treat the same as FIR directing the jurisdictional Police Station to start a specific case against the accused by registering FIR was turned down by the Learned Chief Metropolitan Magistrate, Calcutta. Against the said order, the petitioner moved in revision under Section 397 read with Section 399 of the Code of Criminal Procedure before the Learned Chief Judge, City Sessions Court at Calcutta in Criminal Revision No. 122/2020. The said criminal revision also received the same fate.

Being aggrieved the petitioner has filed the instant application under Section 401 read with Section 482 of the Code of Criminal Procedure. At this stage, it is necessary to state the following undisputed factual aspect involved in the instant matter:-

(i) The petitioner is a Private Limited Company having its business of supplying security guards in the ATMs of different Banks, one Trans Treasure Services India Private Limited is another company performing business of sending cash money in the ATMs of different Banks and providing security guards in the ATM;

(ii) It is also not in dispute that an agreement was executed on 1st August, 2017 between above-mentioned two companies and it was agreed upon by and between two companies that the petitioner company would provide security guards in the ATMs against payment of money to be paid by M/s. Transtreasure Services India Private Limited;

(iii) One Vipin Jain was the Managing Director of M/s. Transtreasure at the time of execution of the agreement and he put his signature on the basis of his company in the agreement;

(iv) Initially, the Petitioner-Company used to provide security guards. There was no problem in business transaction. Subsequently, a sum of more than Rs.42,00,000/-were due to M/s. Transtreasure;

(v) The petitioner requested Mr. Vipin Jain to pay the said amount;

(vi) Mr. Jain replied that he was not in a position to make such payment due to some differences and dispute between other Directors of the Company and he was forced to resign from his post as MD and CEO of the said company. The petitioner demanded his dues from the present Directors but he received a reply from the authorized signatory of Logicash that Mr. Vipin Jain, founder and promoter of Logicash having served in the company as the Managing Director and CEO since

> 2011, was the Officer-in-Charge of the business and, therefore, responsible for all the actions taken by him to run the day to day affairs of the company. As the current Directors and we in the capacity of shareholders of the company were not involved in the day to day function of the business, decisions were taken solely by Mr. Vipin Jain without any intervention from the other Directors of the company. Mr. Vipin Jain continues to be responsible for the liabilities towards the petitioner under law. Thus, the present Directors of M/s. Transtreasure having brand name Logicash refused to make payment of admitted dues to the petitioner.

It is on record that before filing the petition under Section 156(3) of the Code of Criminal Procedure the petitioner filed written complaint with the Officer-in-Charge of Park Street Police Station when Police failed to take any action against the accused persons, the petitioner company filed a complaint to the Deputy Commissioner of Police. However, no action was taken by the police which prompted the petitioner to file a petition under Section 156(3) of the Code of Criminal Procedure.

The main contention by the petitioner in the instant case is that the accused persons being the present Director of M/s. Transtreasure having brand name Logicash misappropriated the dues which the petitioner company is entitled to get and commit cheating.

Section 406 is a penal provision for the offence of criminal breach of trust. In order to prove criminal breach of trust it is the duty of the complainant to make out a case that the beneficial interest in the property in respect of which the offence is alleged to have been committed or vested in some person other than the accused, and that the accused held the property on behalf of that person. Thus, a relationship is created between the transferor and transferee where no transferor remains the owner of the property and the transferee has legal custody of the property for the benefit of the transferor himself or transferee has only the custody of the property for the benefit of the transferor or someone else. At best, the transferee obtains the property entrusted to him only special interest limited to a claim for his charges in respect of its safe retention and under no circumstances does he acquire a right to dispose of that property in contravention of the condition of the entrustment.

Similarly, a bare reading of the definition of cheating contained in Section 415 of the Indian Penal Code would suggest that there are two elements thereof, namely, deception and dishonest intention to do or omit to do something. In order to bring a case within the first part of Section 415 it is essential, in the first place that the person who delivers the property should have been deceived before he makes delivery; and in the second place that he should have been induced to do so fraudulently or dishonestly. Where property is fraudulently or dishonestly obtained, Section 415 would bring the said act within the ambit of cheating provided the property is to be obtained by deception.

Having heard the learned advocates for the petitioner as well as the State of West Bengal it appears to this Court that the accused persons did not deny the liability to the petitioner of payment of charges for providing the facilities of security guards. The accused persons took a plea that since one Vipin Jain executed the agreement with the petitioner company , he is alone liable to pay. The contention of the petitioner, on the other hand, is that the existing debt is of M/s. Transtreasure in the brand name Logicash and it is immaterial as to who had executed the agreement.

Thus, from the facts and circumstances of this case this Court does not find any material of entrustment of the property, in this case money owed to M/s. Transtreasure in the brand name of Logicash.

There is also no allegation that they have misappropriated the said money. It is contended on behalf of the Company that the said dues is the personal liability of Mr. Vipin Jain. Therefore, considering the facts and circumstances of the case this Court is of the view that neither the learned Magistrate nor the Chief Judge, City Sessions Court committed any jurisdictional error or illegality or irregularity in holding that the dispute between the parties is essentially civil in nature.

In view of such circumstances, I do not find any merit in the instant criminal revision and the same is **dismissed** on contest, however, without costs.

The petitioner is at liberty to take necessary action in accordance with law.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)