IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble JUSTICE BIVAS PATTANAYAK

C.R.R. 307 of 2013

With

IA No. CRAN 1 of 2013(Old CRAN 2572 of 2013)

Sri Uday Jayantilal Shah.

-Vs-

Evergreen Drums & Cans Pvt.Ltd.

For the Petitioner:	**Mr. Pawan Kumar Gupta, Adv.**
For the State :	**Mr. Anwar Hossain, Adv.**
	Ms. Sujata Das, Adv.

Heard on: **06.06.2022.**

Judgment on: **14.07.2022**

BIVAS PATTANAYAK, J. : –

1.The present revisional application has been filed by the petitioner-accused no.1 seeking order under Section 401/482 of the Code of Criminal Procedure for quashing of a criminal proceeding in connection with Complaint Case No. C/96/2012 pending before Metropolitan Magistrate, 6th Court, Calcutta, in relation to offences under Sections 420/120B of the Indian Penal Code and all other orders connected thereto.

2.The brief fact of the case is as follows:

(i) The opposite party-complainant is a private limited company dealing in manufacture of drums, barrels, OTS cans, tin containers, BOP tapes and PP caps.

(ii) The petitioner-accused no.1is an exclusive marketing agent for procuring orders, ensuring payments and submitting Sales Tax Form-H, in lieu of commission and for such service a written contract dated 3rd March, 2005 was entered between the petitioner–accused no.1 and the opposite party-complainant.

(iii) In the month of April 2005, the petitioner-accused no.1 procured a purchase order of OTS cans on behalf of *M/s Maa Fruits India Pvt. Ltd.* which was accepted by the opposite party- complainant.

(iv) The petitioner-accused no.1 assured and represented that as the OTS cans were meant for export the petitioner-accused no.1 will supply all relevant documents including Form-H and shipping documents.

(v) The accused no.2 and others executed a bond with the Central Excise Department. The Assistant Commissioner of Central Excise endorsed and accepted the bond and instructed the opposite party-complainant to supply OTS cans.

(vi) On the strength of the bond and believing the representations made by the petitioner-accused no.1 and other accused persons and on good faith the opposite party–complainant started manufacturing OTS cans by procuring materials on payment of

Rs.6,73,558/- as Central Excise duties which was recoverable on submission of shipping documents.

(vii) The materials were supplied to the accused persons. However the accused persons failed and/or neglected to furnish Sales Tax Form-H as well as shipping documents resulting in accrual of liability before the Sales Tax Authorities to the tune of Rs.3,02,635/- and other allied loss to the complainant-company.

(viii) On such allegations the opposite party-complainant submitted a petition of complaint before the Additional Chief Metropolitan Magistrate, Calcutta, registered as C/96/2012.

(ix) The learned Magistrate took cognizance of offence under Section 420/120B of the Indian Penal Code and the case was transferred to Metropolitan Magistrate, 6th Court, Calcutta for enquiry and disposal.

(x) On 07.03.2012 the complainant was examined under Section 200 of the Code of Criminal Procedure and thereafter the learned Magistrate directed Officer-in-charge, Shyampukur Police station to cause enquiry under Section 202 of the Code of Criminal Procedure.

(xi) On 27.04.2012, Officer-in-Charge, Shyampukur Police Station submitted report dated 25.04.2012 and upon consideration of such enquiry report the learned Magistrate issued processes against the petitioner-accused no.1 and others.

3.Being aggrieved by and dissatisfied with the said order the petitioner has sought for quashing of the entire criminal proceedings.

4.Mr.Pawan Kumar Gupta, learned advocate appearing on behalf of the petitioner submitted that the complaint filed by the opposite party-complainant primarily do not disclose offences as alleged. Furthermore, the learned Magistrate without applying judicial mind to the purported report submitted by the Officer-in-Charge, Shyampukur Police Station, issued summons against the accused(petitioner herein). The only allegation against the petitioner is that he failed to submit Sales Tax Form-H due to which Sales Tax liabilities accrued resulting in loss to the opposite party-complainant, which can in no stretch of imagination constitute an offence of cheating and in support of his contention he relied on the decision of the Hon'ble Apex Court passed in ***Anil Ritolla Alias A.K. Ritolia versus State of Bihar and Another, reported in (2007) 10 SCC 110***.He further, referring to an order passed by Hon'ble High Court, at Bombay in Summary Suit 2065 of 2006 filed by the petitioner for his unpaid bills, submitted that the dispute is civil in nature and does not attract any criminal liability. Moreover the contract between the opposite party no.2-complainant and the accused no.1 (petitioner herein) was entered in the year 2005 but the complaint has been filed in the year 2012 after a long delay which raises a serious doubt in the veracity of the complainant's case. In the light of his above submissions he prayed that the entire proceedings in connection with complaint case no. C/96/2012 should be quashed in the interest of justice.

5.In spite of service of notice none appeared on behalf of the opposite party-complainant.

6.It is found from averments made in the complaint that the petitioner is a marketing agent for procuring orders, ensuring payments and submission of statutory Sales Tax Form-H. On 3rd March, 2005 a contract was entered into between opposite party-complainant and the petitioner-accused no.1 for providing the said service. In the month of April 2005, the petitioner-accused no.1 procured a purchase order of OTS cans on behalf of *M/s Maa Fruits India Pvt. Ltd.* which was accepted by the opposite party-complainant. On assurance of the petitioner-accused no.1 and others that the OTS cans were meant for export hence the shipping documents as well as Sales Tax Form-H will be made over to the complainant-company, it started manufacturing the OTS cans on such representation by purchasing materials upon payment of Central Excise Duties to the tune of Rs.6,73,558/- which was recoverable on presentation of shipping documents. Although the goods were supplied to the accused persons, yet, in spite of repeated persuasions those documents were not made over to the complainant-company resulting in loss including Sales Tax liability to the tune of Rs. 3,02,635/-. On 18.04.2022 learned advocate appearing for the petitioner undertook before this court to file documents relating to Sales Tax Form-H, however during the course of hearing he did not to produce those documents. Upon filing of the complaint and after examination of the complainant under Section 200 of the Code of Criminal Procedure, the trial court ordered for enquiry under Section 202 of the Code of Criminal Procedure.

The Investigating Agency submitted enquiry report. The report (Annexure D) clearly indicates of a *prima facie* case for proceeding into the petition. On the basis of the aforesaid report revealing *prima facie* case the learned Magistrate issued processes against the petitioner–accused no.1 and others. In exercising its power under the Code at the stage of issuing process the Learned Magistrate is neither to scrutinize the evidence nor to weigh the probability or improbability with the purpose of proving the case but simply to find out whether materials calls for proceeding with the petition of complaint or not. Therefore, the proceeding before the Magistrate does not call for interference.

7.Learned advocate for the petitioner referring to an order passed by High Court, at Bombay in Summary Suit no. 2065 of 2006 filed by the petitioner for his unpaid bills, submitted that the dispute is civil in nature and does not attract any criminal liability. The aforesaid order dated 16thApril 2007 at page 39 (Annexure F) shows that a Summary Suit was instituted under order 37 of the Code of Civil Procedure by the petitioner in respect of three bills raised by him in relation to agreement dated 3rdMarch, 2005. Be that as it may, it appears from the said order that some part payments were also made by the opposite party-complainant. There cannot be any doubt or dispute that an offence of cheating or fraud can be committed even if the parties enter into a commercial transaction. Several disputes of civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences even if they also amount to civil disputes. The crux of the postulate is the intention of the person who induces another by his representation and not the nature of transaction which would become decisive in discerning whether there was commission of offence or not. The complainant-company has stated that believing on the representation of the petitioner-accused no.1 and others that they would furnish the requisite documents they proceeded to manufacture the goods. The goods were supplied but requisite documents were not furnished resulting in loss to the complainant-company and further in spite of persuasion those documents have not been handed over resulting in loss to the complainant-company. Such averments would primarily make out a case for proceeding. The question whether the facts alleged would constitute inducement of the opposite party-complainant to enter into transaction with a view to deceive the complainant-company and cause unlawful loss are matters which needs to be considered and decided only on evidence. The issues raised in the present application squarely relate to question of fact which is to be assessed and decided in the trial.

8. Further it has been strenuously argued on behalf of the petitioner that the contract between the opposite party-complainant and the petitioner-accused no.1 was entered in the year 2005 and after a long lapse of period the complaint has been filed in the year 2012, raising a serious doubt in the genuineness of the complainant's case. It is trite law that mere delay *per se* would not make the complaint bad in law. The averments in the complaint reveal that there were repeated persuasions and demands made by the complainant-company before the accused persons to make good the wrongful loss. The statement of the complainant made during his examination under section 200 of the Code of Criminal Procedure on 07.03.2012 shows that of late the company namely M/s *Maa Fruits India Pvt Ltd*(Accused no.2),on whose behalf the order was procured, has been wound up and a new company has been formed. Thus the offence appears to be continuous one. In the matters of continuing offence no duration of time can be fixed for filing complaint. In cases of pecuniary loss and causing wrongful loss, time of filing complaint cannot be considered on the touchstone of promptitude in filing complaint like in other cases where there are possibilities of exaggeration and embellishments. The case of the complainant is based on documentary and oral evidence pertaining to wrongful loss and there is hardly any scope for concoction or introduction of coloured version. In such backdrop, I do not find any merit in the aforesaid contention raised by learned Advocate for the petitioner.

9.As regards the decision of the Hon'ble Apex Court passed in ***Anil Ritolla (supra)*** relied on behalf of the petitioner it is found that excepting supply of Form “IX-C” of Bihar Sales Tax Rules other terms and conditions of the contract were complied with, whereas in the case in hand there are allegations that assurance were given by the petitioner-accused no.1 and others that as the OTS cans were meant for export the shipping documents as well as Sales Tax Form-H will be made over to the complainant-company and it started manufacturing the OTS cans on such representation by purchasing materials upon payment of Central Excise Duties to the tune of Rs.6,73,558/- which was recoverable on presentation of shipping documents. Although goods were supplied yet those documents were never made over to the complainant-company resulting in loss. Thus the facts involved in the cited decision of the Hon'ble Apex Court are distinguishable from the case in hand.

10. The inherent powers under section 482 of the Code can be invoked and exercised only when the facts alleged in the complaint even if given face value and taken to be correct in their entirety, does not disclose an offence with which the accused is charged. In the present case in hand it is already found that there are primary materials to proceed and as such invoking inherent power will lead to stifling of a legitimate litigation.

11. In the light of above discussion this Court is of the view that the proceedings under challenge does not call for interference. Accordingly, the present revisional application being **CRR no. 307 of 2013** stands dismissed.

12. It is however made clear that the observations made hereinabove shall not have bearing on the rights and contentions of the parties before the trial court. All the issues are kept open and the parties would be at liberty to assert those issues at the appropriate stage of trial.

13. All connected applications, if any, stand disposed of.

14. Interim orders, if any, stand vacated.

15. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

16. Let a copy of this order be sent to learned trial court for information.

(Bivas Pattanayak, J.)