

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

CRR 780 of 2020

Ramesh Chandra Goyal

Vs.

The State of West Bengal & anr.

For the petitioner: : Mr. Anirban Datta
Mr. Shivam Bhimsaria

For the Opposite Party No. 2 : Mr. Kingshuk Mondal

Heard on: : 31.08.2022

Judgment on: : 09.09.2022

Ajoy Kumar Mukherjee, J.

1. The Present application under section 482 read with section 401/397 of the Code of Criminal Procedure has been preferred for quashing of the proceeding in connection with complaint case being no. CR 65/2019 filed at the behest of one Manik Kumar Saha (opposite party No. 2) against the petitioner herein under section 200 of the Code of Criminal Procedure for the offence punishable under sections 420/406/506 of IPC presently pending before the court of Judicial Magistrate First Court Berhampore, Murshidabad.

2. It has been contended by the petitioner that the petitioner has been falsely implicated at the instance of the opposite party no. 2 in connection with said complaint case with full of concocted story. Petitioner contended that company namely BDG Metal & Powers Limited being substantially well reputed company is in production of TMT Bar. In lieu of such goodwill of the company Opposite Party No. 2 representing himself to be the proprietor/partner of a distributorship concern in the District of Murshidabad had approached Mr. Ritesh Gupta authorised representative of the said company for buying TMT Bar from the company. Pursuant to such persuasion the opposite party no. 2 had forwarded the amount of Rs. 10 Lakhs on 10.08.2013 and subsequently against such payment the company had sent materials amounting to Rs. 12 Lakhs approximately. Opposite party no. 2 operated through its distributor agency namely M/S Sree Krishna Traders being an un-registered partnership firm. Ma Durga Hardware is a sister concern of Sree Krishna Trader. In course of business transaction with Mrs. Ma Durga Hardware and Shree Krishna Traders, opposite party No. 2 had made payment to the tune of Rs. 76 Lakhs till 31.03.2014 and it will be apparent from the ledger of the company that materials worth Rs. 45,52,997/- has been despatched till 24.11.2013 in the name of Mrs. Ma Durga Hardware. The company namely BDG had also despatched materials to the tune of Rs. 2,16,05,583/- and till date an amount of Rs. 38 lakhs approximately stands due from the said dealer.

3. When such facts were brought to the notice of the opposite party no. 2 in the form of a letter dated 29.05.2014 the opposite party no. 2 had issued cheques but the said cheques were dishonoured and for which proceeding

under section 138 of the N.I. Act has been initiated which is pending for adjudication.

4. The petitioner came to learn that after lapse of four years since the last transaction took place the opposite party no. 2 issued purported letters through the learned Advocate dated 11 December, 2018 and 18 January 2019 wherein certain false allegations regarding non supply of the materials by the company has been alleged. It is to be mentioned that in terms of aforesaid letter, no complain regarding quality of the products ever sent by the company. However it appears that in the month of December 2019 opposite party no. 2 has lodged the false complaint being complaint case no. 65/2019 for offence punishable under sections 420 /406/506 IPC.

5. From the contains of the complain it appears that the allegation levelled against the petitioner is that pursuant to their communication for business association, Rs. 10 Lakhs was sent by way of RTGS to the petitioner company on 10th August 2013. Opposite party no. 2 further stated in the complaint that an agreement was allegedly executed by and between petitioner and opposite party no. 2 on 12th August, 2013 regarding said transaction and in the course of business in an around 2013, the opposite party no. 2 had placed order to supply TMT Bar worth of Rs. 1 Crore, out of which upon receiving the TMT Bars, the opposite party no. 2 had disbursed Rs. 79 Lakhs through RTGS and rest Rs.21 Lakhs through cash. Main allegation against the petitioner in the complaint is that upon checking the quality of the TMT Bars the opposite party no. 2 found the same to be of inferior quality and the same could not be used in any project. Accordingly legal notice was sent to the petitioner alleging

such acts of the petitioner and upon receiving such notice the petitioner has threatened the opposite party no. 2 with dire consequences.

6. On the basis of such complaint the Chief Judicial Magistrate Berhampore, Murshidabad by order dated 29th January 2019 was pleased to take cognizance of the complaint and transfer the said case to the court of Learned Judicial Magistrate first Court at Berhampore, Murshidabad. Subsequently on 23rd October 2019 statement of the opposite party no. 2 was recorded under the provision of section 200 of Cr.P.C. and upon recording such statement the Learned Judicial Magistrate was pleased to issue process under the impugned order dated 23rd October 2019.

7. Mr. Anirban Dutta learned advocate on behalf of the petitioner submits that the petitioner is completely innocent and has been falsely implicated. Petitioner is not even a part of the company but is associated only in the capacity of an advisor. He further submits that on bare perusal of the complaint the acts as alleged does not fulfil its requirement of the offence and for which learned Magistrate ought to have dismissed the complaint under the provisions of 203 of Cr.P.C. The business transaction took place with the company namely BDG Metal & Powers Limited but in the purported complaint, opposite party no. 2 has not made said company as a party. Well settled principle is that if the juristic entity is not made a party in any criminal proceeding the said proceedings have no ground to stand due to non-joinder of an appropriate party. From the purported complaint it is clear that in terms of alleged payment the company despatched materials to the opposite party no. 2 and therefore, offence of misappropriation or allegation of cheating does not

have any legs to stand. Furthermore there has been a considerable delay of almost five years in filing of the purported complaint by the opposite party no. 2 and no explanation to such delay has been offered by opposite party no. 2. Petitioner accordingly contended that the company is entitled to receive Rs. 38 Lakhs from the opposite party no. 2 and opposite party no. 2 just to evade such payment, filed such frivolous complaint against the petitioner. Accordingly petitioner contended that further continuation of the present proceeding will be mere abuse of the process of the court and as such said proceeding being complain case no. 65/2019 filed at the behest of opposite party no. 2 is liable to be quashed.

8. Mr. Kingshuk Mondal learned Advocate appearing on behalf of the opposite party submits that the petitioner has cheated the opposite party no. 2 by supplying inferior quality of TMT Bar which cannot be used for the purpose for which it was ordered and as such opposite party no. 2 sustained huge loss and for which learned Magistrate has rightly taken cognizance and the issuance of the process under section 204 is quite justified in view of the facts and circumstances of the case and also in view of the contents of the allegations levelled in the complaint against the petitioners.

9. Considerd submissions made by both the parties.

10. On perusal of the complaint it appears that at the time of the arriving at an agreement or supply, the petitioner never induced opposite party no. 2 to enter into an agreement with a view to cheat him. Admittedly the petitioner had supplied TMT Bars to the opposite party no.2 as ordered by the opposite party No.2 .Therefore this is not a case where in terms of payment, the materials

were not supplied and as such there is no factual foundation of allegation of initial deception. The real dispute between the parties is with regard to the quality of the materials supplied by the company to the opposite party No.2. At this stage no quality tests report submitted by opposite party No.2 to show that the TMT Bars supplied by the petitioner to opposite party no. 2 was of inferior quality. Even if for the sake of argument if it is presumed that the quality of goods that are expected to be supplied by the petitioner no. 1 to the opposite party no. 2, has not been fulfilled, even then it is merely a civil dispute and for which appropriate proceeding can be brought before the civil court having jurisdiction for recovery of damages. Many a time complaints are filed under section 200 of Cr.P.C. by the parties with an oblique motive or for collateral purpose to harass the accused to bring them to their own terms in order to enforce obligations arising out of breach of contract, touching commercial transactions, instead of approaching civil court, with a view to realise money at the earliest.

11. On perusal of the written complaint it appears that the major portion of the complaint had dealt with the business transaction between the parties and it is stated in the complaint that in terms of agreement petitioner has supplied TMT materials to opposite party no. 2 but as the TMT materials was suspicious so it was sent before the expert for examination and on examination it is found that the TMT Bar are of inferior quality. Upto that portion of the description as depicted in the written complaint being Cr 65 of 2019, does not prima facie disclose any offence.

12. However, in the last portion of the written complaint complainant has alleged that complainant on 11.12.2018 sent a legal notice through his lawyer and after receipt of such notice petitioner/accused is threatening the opposite part no, 2 through various means and also disclosed that if opposite party no.2 takes shelter before court of law then petitioner will kill him and as such petitioner apprehends fatal incident. This portion of the allegation is not believable in view of the fact that in the letter dated 18.01.2019 the opposite party no. 2 through his advocate requested to redress the problem to compensate the loss amount of Rs. 1 Crore immediately after receiving the notice by 10th January 2018, otherwise opposite party no. 2 will have no other alternative but to file a suit against petitioner for recover of huge amount of loss and petitioner will be held responsible to compensate the claim amount. Said letter was given on 18.01.2019 and the complaint was lodged on 29.01.2019. Though petitioner contended that in between this period comprising of about ten days the petitioner has threatened opposite party no. 2 with dire consequences but there is nothing to show that opposite party no. 2 had lodged complain anywhere that the petitioner had threatened him, to substantiate his allegation. Furthermore , from the said letter itself it is clear that only 10 days before lodging complain, opposite party no. 2 had only given threat in his letter dated 18.01.2019 to file suit to recover loss and compensation with interest and there was no allegation in the said letter disclosing commission of any offence by the present petitioner. As said portion of the allegation has not been substantiated, so following the principle as laid down in **State of Haryana Vs. Bhajan Lal, (AIR 1992 SC 604)** I am of the view

that the present case which relates to purely civil dispute having no element of criminality is liable to be quashed in view of the fact that the allegations levelled therein does not disclose any prima facie offence against the petitioner and the allegations levelled therein is absurd and inherently improvable.

13. In view of above CRR 780 of 2020 is allowed. Let all further proceeding being complaints case no. 65/2019 pending before the court of learned Judicial Magistrate 1st Court, Berhampore, Murshidabad is hereby quashed

However there will be no order as to the costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)