01.12.2022
S/L No.25
KS

C.R.R. 604 of 2021
Suresh Chandra Khemka & Ors.
-Vs.-
The State of West Bengal & Anr.

Mr. Neelesh Choudhury
Ms. Anuradha Poddar
…..For the Petitioners
Ms. Priyanka Agarwal
…..For the O.P. No.2

The revisional application was preferred challenging the proceeding pending before the Learned Metropolitan Magistrate, 13th Court, Calcutta in connection with Complaint Case No.CN/784 of 2020 under Sections 406/ 409/ 420/ 120B of the Indian Penal Code.

The subject matter of the allegations in the petition of complaint in brief is as follows: "That from the entire episode it is crystal clear that all the accused persons being merchants by entering into a criminal conspiracy with others committed cheating criminal breach of trust and ultimately criminally misappropriating the aforesaid amount towards interest and TDS and caused wrongful gain to themselves and wrongful loss to the complainant company to the tune of Rs.7,29,452/- as such committed the offences punishable under the provisions of Cheating and Criminal Breach of Trust punishable under Sections 406/ 409/ 420 red with 120B of the Indian Penal Code and I.T. Act and are liable to be prosecuted accordingly."

The Learned Magistrate on such complaint being filed was pleased to take cognizance of the offence and after examination of the complainant, Pawan Agarwal and its witness Abanti Jana was pleased to issue process under Sections 406/ 409/ 420 read with Section 120B of the Indian Penal Code against the present petitioner (accused no.2) in the petition of complaint and two others namely, Aman Khemka and Pronoy Khemka.

The sum and substance of the allegations in the petition of complaint related to the allegations that there was wrongful gain at the instance of the accused persons for misappropriating the amount towards interest and T.D.S.

Mr. Choudhury, learned advocate appearing for the petitioners submits that in spite of the TDS amount being paid the present case has been initiated against the petitioners. According to the learned advocate the complaint has been filed with an oblique motive for wrecking their vengeance because of dispute and difference which arose with passage of time.

Ms. Agarwal, learned advocate appearing for the private opposite party resisted the contentions submitted by the learned advocate appearing for the petitioners and submitted that the proceedings relating to the TDS amount was raised by the Income Tax Department and the same would go to show that there was non-payment of the accrual of such tax which was deducted from the complainant and not deposited with the statutory authorities.

I have considered the submissions on behalf of the petitioners as well as learned advocate appearing on behalf of the complainant/opposite party.

Having regard to the subject-matter of the alleged offences, I am of the opinion that in view of the judgment of the Hon'ble Supreme Court in ***Rajeswar Tiwari & Ors. Vs. Nanda Kishore Roy*** reported in ***(2010) 8 SCC 442*** non-deposit of TDS will not amount to an offence being committed under Section 406 of the Indian Penal Code as it is the statutory authorities who are to decide first whether such non-compliance are under the statute particularly relating to the Income Tax Laws. Paragraph 36 of the said judgment is apposite for the application of the instant case which are as follows:-

"36. In the light of the abovementioned well-established principles, we are of the view that the High Court has committed an error, firstly, in not assigning any reason and passing a cryptic order and secondly, failed to exercise its jurisdiction under Section 482 when the complaint does not disclose any offence of criminal nature. For the sake of repetition, we reiterate, though the respondent had some grievance about his non-promotion, certain orders passed by the High Court including filing of contempt, etc., in view of the statutory provisions of the Income Tax Act, the assertion of the appellants that deductions were being made for all the persons who are liable to pay tax in terms of the Income Tax Act, the proper remedy for the respondent is to approach the authority/officer concerned and not by filing complaint as mentioned above. We have already adverted to the report of SI, Hirapur holding that the matter in issue is civil in nature." This leads to the other allegation relating to non-payment of interest.

Having regard to the fact that there has been admittedly a case of non-payment of interest for which there cannot be a case of misappropriation or deception simply a breach relating to the agreement of contract which was entered into by the parties, I am of the view that the continuance of the instant complaint case would be an abuse of the process of law.

Accordingly, all further proceedings relating to Complaint Case No.CN/784 of 2020 pending before the Learned Metropolitan Magistrate, 13th Court, Calcutta is an abuse of the process of law and, as such, is hereby quashed.

With the aforesaid observations, C.R.R. 604 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)