

28.11.2022

Court No.35
Item No. 3

D.Hira

CRR 446 of 2015
With
CRAN 4 of 2017 (Old No. CRAN 3986 of 2017)
Shivajee Mukhopadhyay
Vs.
The State of West Bengal & Anr.

Mr. Sourav Chatterjee,
Ms. Namrata Chatterjee.

... For the petitioner

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose.

... for the State

Petitioner's grievance is relating to the proceedings initiated against him pursuant to the FIR being Barrabazar Police Station Case No. 477 of 2013 dated 18th September, 2013 under Sections 420/467/468/471/477A/409/419/120B of the Indian Penal Code.

Mr. Agarwala, learned Advocate appearing on behalf of the State has raised vehement objection to the prayer of the petitioner and has sought for presence of the defacto-complaints in view of the nature of the offence as alleged in this case.

After perusing the record, it transpires that in spite of service on several occasions, the opposite parties other than the State remained not present in Court. Court's order would clearly reveal that opposite parties, excepting State, have lost interest in contesting this case. Under such circumstances, it is not found prudent to wait for the opposite parties excepting the State, to allow them to find sometime to make their appearance in Court.

It is very pertinent to mention that the matter relates to the year 2015, hence without wasting any further time seeking appearance of the opposite parties who are apparently not interested any more in contesting the matter, the matter is taken up for disposal on merit.

Petitioner's grievance is basically on two grounds. Firstly, that the instant case has been initiated by dint of an order of learned Magistrate passed under Section 156 (3) of the Code of Criminal Procedure without however, complying the mandatory pre-conditions as envisaged under law for passing such an order. Sections 154(1), 154(3) of the Code of Criminal Procedure have been referred to, in this regard.

In support, the following two judgments of the Hon'ble Supreme Court are also referred to and it is submitted that the Hon'ble Supreme Court has held that compliance with the statutory pre-conditions is mandatory. Hence, without the same the present case by the opposite party against the petitioner started under Section 156 (3) of the Code of Criminal Procedure shall be de hors the settled law.

- i. Babu Venkatesh & Ors. vs. State of Karnataka & Anr.** reported in **(2022) 5 Supreme Court Cases 639.**
- ii. Priyanka Srivastava & Anr. vs. State of Uttar Pradesh & Ors.** reported in **(2015) 6 Supreme Court Cases 287.**

Other point envisaged is of the complainant's having and availing the alternative remedial measure as provided under law, who has espoused his cause before an Arbitration and the petitioner has challenged the Award passed by the Arbitrator on 9th July, 2012, in an appeal.

It is submitted that the said appeal is still pending.

Excepting the above two judgments of the Hon'ble Supreme Court the following two orders of the Coordinate Bench of this Court has also been referred to, when on the similar facts and circumstances, the proceedings initiated against the petitioner has been quashed by this Court, i.e.,

- i. Order dated 05.07.2010 in CRR 2826 of 2009**
- ii. Order dated 22.02.2013 in CRR 2716 of 2010**

Fact remains that the opposite party no. 2 filed the complaint in

the Trial Court alleging the facts inter alia, that the petitioner/accused person is the trader who has been entrusted by the complainant to do trade in market, for him. Allegation against him is of unauthorized transaction of complaint's share and negligent service given, to award him wrongful gain and sufferance of prejudice and wrongful loss by the complaint.

The Trial Court by dint of its order dated 22nd August, 2013 directed the police authorities to register a case and initiate the investigation.

However, record reveals before initiation of the criminal proceeding the complainant/opposite party has already undertaken recourse to the arbitration proceedings suggesting therefrom availability of the alternative remedy for him as well as the case to be civil in nature. So far as the ingredients of the alleged offence and availability of those against the petitioner is concerned in this case, considering the complaint and the other materials available in this case, I am constrained to find that the same do not appear to be present against the petitioner in this case.

According to the governing regulations, due procedure had been initiated against the petitioner and the litigation is still continuing. The various essential ingredients, criminality or criminal intent is found absent in this case, on his part. Other statutory remedies being available against the petitioner and being availed of, criminal proceedings, appear to be an abuse of the process of law.

No less important is to mention that no material is available on record to show compliance of Section 154(1) or (3) of the Code of Criminal Procedure by the complaint. Hence, his action is also in defiance of the law settled in this regard by the Hon'ble Supreme Court, in the two judgments mentioned above.

Considering the materials, facts and also discussions as above, I am inclined to find that the proceedings as envisaged against the

present petitioner being Barrabazar Police Station Case No. 477 of 2013 dated 18th September, 2013 under Sections 420/467/468/471/477A/409/419/120B of the Indian Penal Code and all subsequent actions of the prosecution since thereafter shall not be maintainable and would be liable to be quashed and set aside.

Hence, the criminal revision being CRR 446 of 2015 is allowed. All the proceedings/further proceedings in connection with Barrabazar Police Station Case No. 477 of 2013 dated 18th September, 2013 under Sections 420/467/468/471/477A/409/419/120B of the Indian Penal Code are quashed and set aside.

All pending applications, if any, are consequently disposed of.

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

(Rai Chattopadhyay, J.)