

4.8.2022
S.D.
14.

**C.R.R. 583 of 2015
With
CRAN 3 of 2016 (Old CRAN 1248 of 2016)**

**Mrinal Kanti Barman & Anr.
Vs.
The State of West Bengal & Anr.**

Md. Younush Mondal

...For the petitioners.

Ms. Ruxmini Basu Roy

Mr. B.N. Munni

...For the Opposite Party No. 2.

Mr. Binoy Panda

Ms. Puspita Saha

...For the State.

Learned advocate for the petitioners and opposite party no. 1 and 2
are present.

The revisional application filed by the petitioners under Section 482
of the Cr.P.C. is listed today for hearing.

Learned advocates for the State have produced the Case Diary.

Petitioners have prayed for quashing of the criminal proceeding in
connection with B.G.R. Case No. 5882 of 2010/A.C.G.R. No. 3432 of 2011
under Section 120B/406/420B of the IPC pending before the learned
Additional Chief Judicial Magistrate at Alipore.

In gist fact of the case is that the petitioners are the Directors of the
company named and styled as M/s. Snehatuku Agro Products Private
Limited having its registered office at Amba (Gokulpur), Police Station –
Kharagpur, Paschim Medinipur. Opposite party no. 2 is the proprietary
concern under the named and style of M/s. Minion Engineering and

Contractors, having its registered office at 51, Santoshpur Avenue, Calcutta – 700 075.

Petitioners' company undertook a construction of work of rice mill at village and Post Office – Bonpatna, District – Medinipur with financial assistance from West Bengal Finance Corporation. Opposite party no. 2 was entrusted by the petitioners' company with the entire job of turnkey execution of rice mill within a period of four months from the date of execution of the Deed of Agreement dated 20.3.2003, entered into between the petitioners' company and opposite party no. 2 as the second party laying down the terms of work, mode of payment and in the event of any dispute, the matter would be referred to an independent Arbitrator to settle such dispute. The terms of argument was mutually acceptable by both the parties.

Opposite party no. 2 lodged a complaint against the petitioners' company and its Directors under Section 156(3) of the Cr.P.C., which was registered as Purba Jadavpur Police Station Case No. 234 dated 25.10.2010 under Section 120B/406/420 of the IPC for non-payment against work done.

The petitioners herein have prayed for quashing of the proceedings on the ground that there is no *mala fide* or dishonest intention on the part of the petitioners regarding satisfying of the claim of the informant as they were making payment after taking loan from W.B.F.C. It is further contended that the defacto-complainant could have made claim for the money due to them on the basis of the agreement and initiating a

criminal case is not proper. It is stated that to avoid the period of limitation in making their claim, the opposite party no. 2 cannot be permitted to resort to a criminal proceeding. It is further asserted that the petitioners have already made payment of Rs.5,21,000/- to the proprietary concern of opposite party no. 2. It is urged that the dispute between the parties is civil in nature and continuation of this proceeding has resulted in the abuse of the process of the Court.

Learned advocates for the State/O.P. No. 1 fairly submitted that in this case, there is no ingredient of the offence under Section 420/406 of the IPC against the petitioners as the Financing company, being W.B.F.C. has withdrawn from making any payments to the petitioners for the purpose of making payment of the dues to opposite party no. 2.

Learned advocates for opposite party no. 2 submitted that on the basis of the earlier application under Section 156(3) of the Cr.P.C. submitted before learned Magistrate, the ingredients of the offence disclosed in the application was considered by the Magistrate and the same was referred to the concerned police station from registering as a specific case. It is further submitted that the petitioners herein have intentionally avoided making payment to opposite party no. 2 after the work was completed.

Considered the submissions made by learned advocates for the respective parties. It appears from the annexures to the application filed by the petitioners that the petitioners and opposite party no. 2 entered into an agreement through their respective representatives on 5.2.2003

whereby the terms of work to be done and payments to be made were specifically laid down. It also transpires from paragraph 20 of that agreement that an Arbitration Clause was introduced in order to settle any dispute between the parties arising out of such work. On careful scrutiny of the contents of the agreement, it appears to me that the dispute between the parties is civil in nature, which could be adjudicated before a Civil Court by seeking a money decree or specific performance of contract. Such dispute cannot be given a cloak of a criminal liability. Furthermore, it appears from the application under Section 156(3) of the Cr.P.C. filed by opposite party no. 2 before the Court of learned Additional Chief Judicial Magistrate, Alipore that the complainant has suppressed the fact regarding the agreement entered into between the parties.

In such view of the matter, I hold that continuation of this criminal proceeding against the petitioners would amount to an abuse of the process of the Court. Therefore, invoking the jurisdiction of this Court under Section 482 of the Cr.P.C., the criminal proceeding being B.G.R. Case No. 588 of 2010/A.C.G.R. No. 3432 of 2011 under Section 120B/406/420 of the IPC pending before learned Additional Chief Judicial Magistrate, Alipore is quashed.

The revisional application is thus allowed.

Interim order, if any, stands vacated.

All interim applications are also disposed of.

Let a copy of this order be communicated to learned Additional Chief Judicial Magistrate, Alipore for information.

All parties shall act upon the server copy of the order downloaded from the official website of the Court.

(Ananda Kumar Mukherjee, J.)