

05.04.2022

Item No.54
Ct.No.34
dc.

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

C.R.R. 1195 of 2018

**M/s Ananya Wood Pvt. Ltd.
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973 filed in connection with Complaint Case No. C-857 of 2018 under Sections 420/406 of the Indian Penal Code pending before learned Judicial Magistrate, 7th Court, Alipore, South 24-Parganas.

Mr. Ayan Bhattacharjee,
Mr. Ranadeb Sengupta,
Mr. Rajib Mullick,
Ms. Sonia Mukherjee ... For the Petitioner.

Mr. Pratip Mukherjee,
Mr. Rahul Modak ... For the Opposite Party No.2.

The present revisional application has been preferred challenging the continuance of the proceedings being Complaint Case No. C-857 of 2018 pending before the learned Judicial Magistrate, 7th Court, Alipore, South 24-Parganas.

The summary of the allegations made in the petition of complaint were with respect to a sum of Rs.12,24,000/- not being paid for the services rendered in respect of shipments as also seven containers being detained by the accused persons and it has been submitted consequently the complainant has suffered a loss of Rs.20,24,000/-.

Prayer was advanced before the learned Magistrate for issuance of process under Sections 420/406/120B of the Indian Penal Code along with an application under Section 94

of the Code of Criminal Procedure. One Sujit Kumar Mitra, Senior Executive Operation of the complainant/opposite party no.2 was examined under Section 200 of the Code of Criminal Procedure who reiterated the same contentions as made in the complaint. Subsequent to the order passed by the learned Magistrate under Section 94 of the Code of Criminal Procedure, seven containers were seized by the concerned officer of West Port Police Station on 04.05.2018.

The petitioner before this Court happens to be the accused no.1 who happens to be the importer. The representations which have been made for non-payment of the services rendered as also withholding of the containers relate to opposite party no.2 who also happens to be a shipping company and it has been contended in the allegations that there was a 'running account'.

In view of the regular business transactions taking place between the Accused No.2 and the complainant, I am of the, *prima facie*, opinion that a case under Section 420 of the Indian Penal Code is not made out as in a regular business activity where there are previous transactions between the parties, it cannot be said that from the inception, the accused had the intention of deceiving the complainant.

So far as the allegation made under Section 406 of the Indian Penal Code is concerned, the withdrawal of the containers was at the instance of the accused no.2 in the petition of complaint and as the allegation is with respect to

empty containers, this offence is also not made out against the accused no.1/petitioner before this Court.

Accordingly, I am of the opinion that further continuance of the proceedings, so far as the present petitioner being the accused no.1 is concerned, is an abuse of the process of the Court and should not be allowed to continue. Thus, the proceedings of Complaint Case No. C-857 of 2018 pending before the learned Judicial Magistrate, 7th Court, Alipore, South 24-Parganas are quashed so far as the present petitioner viz. M/s Ananya Wood Pvt. Ltd. is concerned.

The proceedings may continue so far as the other accused is concerned.

With the aforesaid observations, the revisional application being CRR 1195 of 2018 is allowed.

Interim order, if any, is hereby vacated.

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

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

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

(Tirthankar Ghosh, J.)