

CRR 1113 of 2008
With
IA No. CRAN 1 of 2022 & CRAN 2 of 2022

In Re: - An application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of: Sadhna Mishra

.... Petitioner

Mr. Pawan Kr. Gupta,
Ms. Sofia Nesar

...for the Petitioner

Mr. Sib Sankar Das,
Mr. Subhajit Manna

...for the Opposite Party No. 2

CRAN 1 of 2022

This is an application for restoration. Having regard to the averments made in this application, I am of the opinion that the reason for non-appearance of the learned advocate for the petitioner on August 3, 2021, has been sufficiently explained.

Accordingly, CRAN 1 of 2022 is disposed of.

CRAN 2 of 2022

It has been averred in this application for condonation of delay that the petitioner came to know about the dismissal of the case only on March 1, 2022.

The causes shown being sufficient, the application for condonation of delay stands allowed.

Accordingly, CRAN 2 of 2022 is disposed of.

CRR 1113 of 2008

The opposite party no. 2 filed an application under Section 156 (3) of the Code of Criminal Procedure, 1973 against the petitioner alleging, *inter alia*, that the petitioner was the Estate Manager of M/s. Larsen & Toubro Limited (L & T in short) at its office at 16, Camac Street, Kolkata – 700016.

The opposite party no. 2 was approached by a broker to find out an office for British Airways on a rental basis in a good location in Kolkata.

The opposite party no. 2 accordingly, contacted the petitioner for providing the space. After protracted negotiation, a space was given to British Airways for office. The opposite party no. 2 acted as a broker on behalf of L & T. The petitioner and the company namely, L & T agreed to pay a brokerage equivalent to one month's rent to opposite party no. 2.

Agreed monthly rent of the premises was Rs. 2,76,500/-, the opposite party no. 2 accordingly, raised a bill of Rs. 2,76,500/- along with 8% service tax.

The bill was accepted by the petitioner and L & T, but thereafter the petitioner started to avoid the opposite party no. 2 and did not pay the brokerage as agreed.

The petitioner and L & T intentionally deceived opposite party no. 2 and dishonestly induced him to act on their behalf so that British Airways could be inducted as a tenant under the L & T.

Though the allegations are against the company as well, in the complaint, the company has not been made a party.

I am of the opinion that the nature of the allegation as apparent from the complaint does not constitute an offence under Section 420 of the Code of Criminal Procedure, 1973. Non-payment of a brokerage may be a ground for filing a civil suit but the petitioner cannot convert a transaction which is civil in nature into a criminal proceeding as a pressure tactic to realise his alleged dues.

In that view of the matter, I am of the opinion that the present criminal case cannot continue. Accordingly, C-3060 of 2004 under Section 420 of the Indian Penal Code, pending before the Court of the Learned 11th Metropolitan Magistrate, Kolkata is hereby quashed.

CRR 1113 of 2008 is disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)