

14.11.2022
Item No.12
BR

CRR 1193 of 2005

Bajaj Allianz General Insurance Co.
Ltd. & anr.
-Vs-
East India Produce Ltd.

Mr. Amitava Mitra,
Ms. Antara Chowdhury
... for the Petitioners

Affidavit of service submitted by Mr. Mitra, learned counsel for the petitioner is taken on record.

This is an application under Section 482 of the Criminal Procedure Code for quashing of the proceeding in case No. CR 18 of 2004 registered under Section 420 of the Indian Penal Code pending before the learned Chief Judicial Magistrate, Darjeeling and order dated 10.12.2004 passed by learned Chief Judicial Magistrate after after considering the petition of complaint filed by M/s. East India Produce Limited.

Fact of the case in short is that M/s East India Produce Private Limited the opposite party herein is the owner of tea estate who purchased insurance policy from M/s. Bajaj Allianz General Insurance Company Ltd. having its branch at Hillcart Road, Siliguri, District-Darjeeling to secure interest of the Tea Estate against any theft or pilferage.

Due to labour unrest the tea estate slapped a notice of suspension of work and after considerable period of time, on re-opening the company found out an incident of theft and pilferage of tea to the tune of approximately 9859 kgs. and brought the matter to the notice of the

police and police accordingly registered a case. The company also informed the insurer claiming compensation to the tune of Rs. 14,78,850/- but the insurer considered a sum of Rs. 2,67,500/- to be the just compensation. This decision of the insurer triggered the proceeding before the learned Court of Chief Judicial Magistrate. Simultaneously a civil proceeding was also initiated. Mr. Mitra drawing my attention to paragraph 14 of the petition of complaint submits that a civil suit was filed by the company against the insurer and a civil revision being CO No. 1854 of 2005 was filed by the insurer. During hearing of the petition on 6th December, 2005, learned counsel representing the tea company, the plaintiff, undertakes before the Hon'ble Court in the said proceeding that the criminal proceeding initiated against the Directors of the Insurance company being CR No. 18 of 2004 pending before the learned Chief Judicial Magistrate, Darjeeling would be withdrawn within a period of four weeks from that date. Mr. Mitra, however, expressed his inability to inform the Court about the present status or the step that was taken pursuant to the undertaking given by learned advocate for the tea company. Be that as it may, admittedly the petitioner being insurer entertained the claim lodged by insurer tea company and to their assessment fixed an amount which according to the insurer would be just and reasonable and the tea company did not agree to accept such award. In this entire episode nothing is found to indicate the mens rea on the part of the insurance company to induce the tea company and to cheat the company.

In my humble opinion this is absolutely a civil dispute no criminal proceeding can be allowed to run when mens rea to commit the offense is absent. Learned Chief

Judicial Magistrate, in my humble opinion, failed to exercise his jurisdiction vested upon the Court while issuing the process under Section 420 of the Indian Penal Code against the petitioners. This is a fit case to invoke the inherent power conferred under Section 482 of the criminal procedure Code to set aside the order of learned Chief Metropolitan Magistrate, Darjeeling and to quash the criminal proceeding no. 18 of 2004 which I according to do.

The criminal revision is, thus disposed of.

Let a copy of this judgment be sent down to the learned trial Court for information and taking necessary action.

Urgent certified copy be made available , if applied, therefor, upon compliance of requisite formalities.

All parties are to act on the server copy of this order duly downloaded.

(Siddhartha Roy Chowdhury, J.)