

21-04-2022
Subha
Item no.27
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 1563 of 2017
with
IA CRAN 6 of 2020(Old CRAN No. 348 of 2020)

In the matter of : **Sandeep Kumar Maniyar**petitioner.

In Re : An application under 482 of the Code of Criminal Procedure.

Mr. Sourav Chatterjee
Mr. Sumanta Ganguly
Mr. Shiv Ratan Kakrania
....for the petitioner.

Mr. Swapan Banerjee
Ms. Debjani Sahu
....for the State.

Affidavit of service so filed by kept with the record.

The present revisional application has been preferred challenging the complaint case being Case No. CS-0088078 of 2016 pending before the learned Metropolitan Magistrate, 12th Court, Calcutta under Section 420 of the Indian Penal Code.

The allegations made in the petition of complaint was that the complainant was engaged in the business of financial assistance in loan cum hypothecation basis to different borrowers having its office at “Viswakarma” Building, 86C, Topsia Road South, Kolkata-700046.

It has been contended that the petitioner herein along with others approached the complainant company for a loan of

Rs.21,83,11,471/- by way of monthly lease rentals in the following manner :-

- I. "At the rate of Rs.27,40,775/- for 1st to 7th lease rentals commencing from June 22, 2014 to December, 2014;
- II. At the rate of Rs.48,33,630/- for 8th to 43rd lease rentals commencing from January 22, 2015 to December 22, 2017;
- III. At the rate of Rs.37,37,320/- for 44th lease rentals due on 22nd January, 2018.
- IV. At the rate of Rs.71,26,014/- for the 45th to 47th lease rentals commencing from February 22, 2018 to April 22, 2018."

It was further contended that complainant company provided the said financial assistance for sum of Rs.21,83,11,471/- for purchasing of IT equipment as per the agreement entered into and as per the requirement of the accused persons.

The complainant company alleged that after paying 11th lease rentals, the accused persons deliberately failed and neglected to pay any further monthly lease rentals and as such there was an outstanding loan amount of Rs.5,30,88,359/- due as on 31.01.2016. The complainant claimed the said amount by a demand notice which was neglected and as such it has been alleged that the complainant has committed offences under Sections 406/420/506 IPC read with Section 120B of the said Code.

After the petition of complaint was filed before the jurisdictional court, the jurisdictional court was pleased to take cognizance of the offence and transmit the case to the learned court of Metropolitan Magistrate, 12th court, Calcutta. The learned

Metropolitan Magistrate, 12th court, Calcutta after conducting examination under Section 200 of the Code of Criminal Procedure and Section 202 of the Code of Criminal Procedure was placed to issue process under Section 420 of the Indian Penal Code against all the accused persons named in the complaint by its order dated 4th April, 2017.

I have considered the allegations made in the petition of complaint as also appreciated the nature of the allegations.

Having regard to the admitted facts mentioned in the compliant that 11 monthly lease rentals were paid and 3/4th of the payment having been made, I am of the opinion that this is not a case where the accused had any intention from the inception for deceiving the complainant company.

The present case has been filed for recovery of outstanding as contended in the complaint. That being the case, I am of the opinion that no case under Section 420 of the Code has been made out and a civil dispute has been given the cloak of a criminal proceeding.

Thus, further continuance of the proceedings being Compliant Case No. CS-0088078 of 2016 pending before the learned Metropolitan Magistrate, 12th Court, Calcutta along with all the orders passed therein including the order of taking cognizance and issuance of process is hereby quashed.

Accordingly, the present revisional application being CRR 1563 of 2017 is allowed.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, if any, is hereby made absolute.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]