

14.03.2022

Item No.59
Ct.No.34
dc.

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

C.R.R. 1993 of 2016

**Sri Shyam Sundar Goyal
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure filed for quashing of proceedings being G.R. Case No. 2081 of 2015 arising out of Siliguri (Panitanki) Police Station Case No. 541 of 2015 dated 19.06.2015 under Sections 403/406/420 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Siliguri, Darjeeling.

Mr. Ayan Basu,
Mr. Samrat Das,
Mr. Sumit Routh ... For the Petitioner.

Mr. Shataroop Purkayastha ... For the State.

Mr. Pratim Dasgupta,
Mr. Pradeep Sancheti ... For the Opposite Party No.2.

The present revisional application has been preferred challenging Siliguri (Panitanki) Police Station Case No. 541 of 2015 dated 19.06.2015 under Sections 403/406/420 of the Indian Penal Code.

The contention of the petitioner amongst others is that the present case is barred on the issue of second FIR. According to Mr. Basu, learned advocate appearing for the petitioner, the present is a case which would be clear from the allegations made in the FIR that was for recovery of dues. Learned advocate for the petitioner further submits that there are two civil cases pending between the parties on the selfsame subject matter.

Mr. Dasgupta, learned advocate appearing for the opposite party no.2 files affidavit-in-opposition incorporating number of documents which were not available there when the charge-sheet was filed after concluding the investigation.

Let the affidavit-in-opposition filed on behalf of the opposite party no.2 be kept on record.

Mr. Purkayastha, learned advocate appearing for the State submits that once the investigation has been concluded, trial must be taken to its logical conclusion. Learned advocate further submits that the allegations made in the FIR as well as in the charge-sheet do substantiate the charges under Sections 406 and 420 of the Indian Penal Code as there are glaring materials pointing out regarding the issue of advance and non-payment thereof by the petitioner.

I have considered the allegations made in the petition of complaint as well as the subsequent charge-sheet which has been filed therein. I find that the case was initiated under Sections 403/406/420 of the Indian Penal Code, but in the letter of complaint itself it has been stated that as on 31.03.2015 the total amount recoverable from them along with interest is Rs.1,24,57,502/-. The Investigating Officer while submitting his report under Section 173 of the Code of Criminal Procedure has referred to the contents of the letter of complaint and has specifically stated as follows :

“The Director of said company refused to return their dues in spite of repeated letters, demands and persuasions. The dues with the Khayerbari Tea Co. Ltd. as on 31.03.2015 was Rs.1,24,57,502/- along with interest of the complainant’s company.”

Having regard to the nature of the allegations and tenor and spirit of the FIR as well as the charge-sheet, *prima facie*, I am of the opinion that the same refers to breach of agreement and no case for cheating or criminal breach of trust within the meaning of provisions under Sections 406 and 420 of the Indian Penal Code is made out. Further the allegations do not satisfy the basic definition of Section 403 of the Indian Penal Code. In fact, a civil dispute for recovery has been converted and given the cloak of a criminal proceedings. Having regard to the same, I am of the opinion that further continuance of Siliguri (Panitanki) Police Station Case No. 541 of 2015 is an abuse of the process of the court and as such, the same is liable to be quashed. Thus, the proceeding being G.R. Case No. 2081 of 2015 arising out of Siliguri (Panitanki) Police Station Case No. 541 of 2015 dated 19.06.2015 under Sections 403/406/420 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Siliguri, Darjeeling is hereby quashed.

Accordingly, the revisional application being CRR 1993 of 2016 is allowed.

Mr. Dasgupta, learned advocate appearing for the opposite party no.2 has filed affidavit-in-opposition which incorporates two documents which were not available with the complainant in course of the investigation, and could not be placed before the investigating agency in course of investigation. Accordingly, if the opposite party no.2 prefers a complaint under Section 200 of the Code of Criminal Procedure, with reference to the documents which have been placed in the affidavit-in-opposition, the learned Additional Chief Judicial Magistrate, Siliguri would be at liberty to decide on the issue of Sections 190 and 204 of the Code of Criminal Procedure after assessing the documents so presented regarding a *prima facie* case being made out.

Interim order, if any, is hereby made absolute.

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.)