

28.03. 2022
item No.4
n.b.
ct. no. 34

CRR 1804 of 2019

**Mr. Satyajit Sribastava & Ors.
Vs.
Sri Amitavo Pal**

Mr. Sandipan Ganguly
Mr. Abhishek Bhandari,
Mr. Amitava Mitra,
Ms. Antara Chowdhury
.. for the petitioners.

Mr. Idris Ali,
.....For the opposite party.

Mr. Imran Ali,
Ms. Debjani Sahu
.....For the State.

The present revisional application has been preferred challenging the proceedings being case No. AC/1110/2018 (T.R. 361 of 2018) under Sections 420/406/120B of the Indian Penal Code pending before the Learned Chief Judicial Magistrate, 3rd Court, Alipore, South 24-Parganas.

The present complaint case was initiated at the instance of one Amitava Pal against the present petitioners who were associated with M/s. Chennai Network Infrastructure Ltd.

The allegations made in the petition of complaint were as follows:

The complainant being the authorized representative of the other inhabitant/flat owners of premises being No. 32/51, Chandi Ghosh Road, P.S. Regent Park, Kolkata-700040 has filed

the complaint. It is alleged that on or about April 2008 the accused persons approached for entering into an agreement for usage of portion of roof measuring about 500 square feet in the premises of the said address. Pursuant to the proposal of the accused persons to the flat owners, it was agreed to let out a portion of the roof of the premises on a monthly/licence fees of Rs.12,500/- for a period of 12 years with the option of increasing the licence fees at the rate of Rs.10 per cent per year. It was also agreed that the accused persons would pay the monthly taxes to the K.M.C. Authorities for the portion of the said premises till the date of expiry of the licence period i.e. 23.04.2020. The K.M.C. Authorities issued Tax Bills to the complainant demanding Municipal Taxes in respect of the arrear used by the accused persons for commercial purpose. Surprisingly, the accused persons preferred application before the Hon'ble High Court, Calcutta and it was directed by the Hon'ble High Court to the accused persons to pay Municipal Taxes to K.M.C. Authorities as per their earlier rate. In spite of said order passed on 27th July, 2016 being case No. F.M.A. 807 of 2015 in CAN No. 11536 of 2014 (Indus Towers Ltd. & Anr. -Vs. - Kanchrapara Municipality & Ors.), the accused persons did not pay taxes of Rs.12,59,745/- to the K.M.C. The accused persons since December 2017 are not even paying the licence fees, the complainant alleges that the accused persons has conspired for wrongful gain to cheat the complainant by not paying huge Municipal Taxes and Licence Fees and intentionally evaded the order passed by the Hon'ble High Court, Calcutta. The accused persons also committed criminal breach of trust and cheating

thereby causing wrongful loss to the tune of Rs.13,26,309 to the complainant/flat owners.

On receipt of the petition of complaint the Learned Additional Chief Judicial Magistrate was pleased to take cognizance of the offence and transfer the case to the Learned Judicial Magistrate, 3rd Court, Alipore and Learned Judicial Magistrate after examining the complainant under Section 200 was pleased to issue process under Sections 421/120B/406 of the Indian Penal Code.

I have considered the allegations made in the petition of complaint which were restricted to non-payment of Municipal Taxes as also licence fees for using the area at the roof of the flat owners who happened to be the complainant. The nature of the allegations are in the form of recovery of money and/or breach of agreement if the allegations are accepted to be true in its entirety. There is no case made out by the complainant that from the inception the accused persons have deceived or induced the complainant to part with any property or there was any entrustment for which any misappropriation has been committed. The complainant has his remedy before the other forum for non-payment of Municipal Taxes or for recovery of licence fees.

Having regard to the basic tenants of the allegations and the foundation for the offence under Sections 420/406 of the Indian Penal Code I am of the opinion, that no case has been made out under the said sections nor the complaint taken as a whole makes out any offence for the purposes of penal code offences.

As such further continuance of the proceedings being complaint case No. AC/1110/2018 (T.R. 361 of 2018) pending

before the Learned Judicial Magistrate, 3rd Court, Alipore, South 24-Parganas is an abuse of the process of the Court and as such interference is called for. Thus, all further proceedings in respect of the aforesaid complaint case is quashed before the Learned Judicial Magistrate, 3rd Court, Alipore, South 24-Parganas.

Accordingly, CRR 1804 of 2019 is allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby made absolute.

This order will not deter the complainant to approach any other forum where his remedy lies.

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

(Tirthankar Ghosh, J.)