

28.04. 2022
item No.21
Rakib (PA)
Ct. no. 34

CRR 3304 of 2019
With
IA No. CRAN 4 of 2022 (not found)

Sri. Manoj Jayaswal & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Sabyasachi Banerjee,
Mr. Ayan Bhattacharya,
Mr. M.S. Tiwari,
Mr. Ravindra Tiwari
Ms. Shweta Poddar
.... For the petitioners

Mr. Arijit Ganguly,
Mr. Avik Ghatak
....for the State

The present revisional application has been preferred for quashing of the process issued by the learned A.C.J.M., Durgapur vide order dated 17.08.2019 in connection with C.R. Case No. 390 of 2019 under Sections 420/406/504/506 of the Indian Penal Code.

The genesis of the case relate to an application under Section 156(3) of the Code of Criminal Procedure filed at the instance of the complainant/opposite party wherein it was alleged that the complainant completed job assignment to the tune of Rs.44,79,162/- for which the accused persons were supposed to make payment in respect of the bills raised. The complainant repeatedly sent notices and lastly when the complainant had been to the office on 10.03.2019 for

demanding and disbursing the dues the petitioners threatened the complainant and were also assaulted. It has been alleged that the accused/petitioner have used certain blank papers which was signed by the complainant for preparing forged documents and black-mailing him. The accused persons have also caused wrongful loss to the petitioner and as such the allegations must be investigated against them.

The learned A.C.J.M., Durgapur refused to pass any order in respect of investigation being conducted but took cognizance of the offences in respect of the allegations made in the petition of complaint and transferred the case to learned Judicial Magistrate, 2nd Court, Durgapur. The learned Judicial Magistrate, 2nd Court, Durgapur after examining the complaint under Section 200 of the Code of Criminal Procedure was pleased to issue process under Section 467/323/406/420/120B of the Indian Penal Code and directed for appearance of the present petitioners. For necessity in appreciation of the case the examination of complainant on S.A. (17.08.2019) is reproduced as follows:

“I Asutosh Kumar Singh son of Late R.P. Singh, aged 61 years proprietor of M-Tech combined lodged his complaint against four accused persons namely Manoj Jayaswal, Rabindra Jayaswal, Bishal Jayaswal and against M/S Corporate Ispat Alloy Ltd.

I used to had a business relationship with the accused persons as a contractor, with under work Order to supply manpower and other mechanical works at the Banskopa Unit of Corporate Ispat Alloy Ltd. Under Avijit group. During such course of business I incurred a dues of

Rs.44,79,162/- against the said accused persons. After repeated intimation through my Ld. Adv and I also personally visited them for realization of my lawful dues. But the accused persons denied any such payment and also threatened me with life and dire consequences, lastly on 20.03.2019 I was assaulted and manhandled by the accused persons which caused serious bodily injury and mental trauma to me. The accused persons by way of non payment of my lawful dues committed and offence of wrongful gain and also wrongful loss upon me. I went to local Kanksa PS but police did not lodge any FIR. As such I lodged this Court complaint before Ld. ACJM Durgapur.

Today I produce before this Court all relevant documents in original in respect of my work Order and lawful dues from the accused persons. I pray for necessary Order against the accused persons. Be it mention here that the accused persons obtained from me my signature on blank papers and other documents during the course of our business transaction. At present the accused persons threatened me to use such documents against my interest.”

In order to consider the foundation of the case for which the present petitioners have been asked to face trial the petition of complaint as well as the examination of the complainant both are to be taken into account. On an assessment of the materials of the complaint as well as the examination of the complainant under Section 200 of the Code of Criminal Procedure it is transparent that the present case was instituted for the purpose of recovering outstanding demands in respect of the contractual obligations. The terms “during such course of business”, “dues” and “outstanding payment” itself reflect that no offence under Section 420 of the

Indian Penal Code could have been committed as there was regular transaction taking place, further it has been settled that breach of contractual agreements necessarily would not attract the provisions of Section 405/406 of the Indian Penal Code. Except bald allegations there are no materials substantiating any forged documents for the purpose of applicability of Section 467 of the Indian Penal Code. The other Section which has been referred to is Section 323 of the Indian Penal Code in respect of being manhandled and assaulted at the office of the petitioners. The mere allegation that the accused/petitioners has assaulted and manhandled the complainant, falls short of satisfying the requirement under Section 204 of the Code of Criminal Procedure directing the petitioners to face trial in the backgrounds of the facts of the present case as the complainant has attempted to convert a purely civil dispute into a criminal proceeding.

In view of the observations made above, I am of the opinion that further continuance of the proceedings would be an abuse of the process of the Court and as such the same is liable to be quashed. Accordingly, all further proceedings relating to M.P. Case No. 390 of 2019 (CR. 390/2019) pending before the learned Judicial Magistrate 2nd Court, Durgapur is hereby quashed.

Consequently, CRR 3304 of 2019 is allowed.

Pending applications, if any, is consequently disposed of.

Interim order, if any, is hereby made absolute.

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

(Tirthankar Ghosh, J.)