IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1408 of 2019

Great Eastern Energy Corporation Limited

-vs.-
SRMB Srijan Ltd.

With
CRR 3329 of 2019

with

CRAN 1 of 2021

Yogendra Kumar Modi & Ors.

-vs.-
SRMB Srijan Ltd.

Mr. Debasish Roy,
Mr. Kaushik Gupta,
Ms. Debdatta Ray Chowdhury.

For the Petitioners in CRR 1408 of 2019
and CRR 3329 of 2019

Mr. Sekhar Basu, Ld. Sr. Adv.,
Mr. Sourav Chatterjee,
Mr. Arnab Das,
Ms. Paromita Purkait Ram,
Mr. Rabindra Kumar Pathak.

For the Opposite Party in CRR 1408 of 2019
and CRR 3329 of 2019

Mr. Swapan Banerjee,
Mr. Suman De.

For the State in CRR 1408 of 2019
and CRR 3329 of 2019

Reserved on	:	22.08.2022
Judgment on	**:**	**08.12.2022**

Tirthankar Ghosh, J:-

In these two revisional applications the subject matter relates to complaint case being C. Case No. CNS/124/2019 under Sections 384/406/420/467/468/120B/34 of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 9th Court, Kolkata. In CRR 1408/2019 the petitioner happens to be the company namely, Great Eastern Energy Corporation Limited and in CRR 3329 of 2019 the petitioner no.1 happens to be Executive Chairman of the Company, petitioner no.2 is the Managing Director and CEO of the Company, petitioner no.3 is the Non-Executive Independent Director of the Company, petitioner no.4 is Non-Executive Independent Director of the Company, petitioner no.5 is Non-Executive Director of the Company, petitioner no.6 is the Company Secretary & Head (Legal) of the company, petitioner no.7 is the Chief Financial Officer of the company and petitioner no.8 is the DGM-Marketing of the company.

The subject matter of both the revisional applications relate to quashing of the complaint being C. Case No. CNS/124/2019 pending before the Learned Metropolitan Magistrate, 9th Court, Kolkata and the orders passed therein. The allegations/averments made in the petition of complaint are as follows:

1) SRMB Srijan Limited (hereinafter referred to as the 'complainant Company') is engaged in the business of Rolling Mill and deals with

manufacturing of Steel Rods, Bars, Angels, Channels etc. of various specifications in the name and style of 'SRMB'. The company is represented by Rajib Ghosh, Senior General Manager (Projects & Purchase) of SRMB Srijan Private Limited who was empowered to file complaint by the Board Resolution passed by the Company.

2) Great Eastern Energy Corporation Limited (hereinafter referred to as the 'accused Company) is engaged in the business of CBM (Coal Bed Methane) gas exploration and distribution awarded by Government of India to cater CBM gas. The accused Company is located at Raniganj (South Block) and encourages use of gas as an alternative source of fuel to ensure a proper supply of CBM gas in and around Raniganj-Asansol-Durgapur industrial areas. The individual accused persons named are associated with the Company either as Board of Directors or responsible for day to day conduct of the business of the Company and are involved in the offence.

3) On or about February, 2010 the accused persons representing the accused Company approached the complainant company at its registered office requesting them to shift its furnace fuel from Coal gasification process to Coal Bed Methane gas. In the month of April, 2011 the complainant company decided to shift to CBM gas from conventional fuel and accordingly the draft format agreement

being 'Gas Sale and Purchase Agreement' was sent to the complainant company for its perusal and approval. After exchange of several drafts through e-mail two identical agreement dated 11.05.2011 were finally signed for a period of 25 years and the first pricing of the Coal Bed Methane Gas was valid till 11.05.2012, subject to revision thereafter. The said agreement was duly signed by both the sides wherein Mr. Suriyanarayanan, Mr. Monik Parmar and Mr. Sridhar Vishwanath were signatories on behalf of the accused company.

4) The salient feature of the agreement dated May 11, 2011 as set out in the complaint were as follows:

(a) The said agreement shall remain in force till twenty five (25) years subject to revision of terms and conditions including price and the accused persons reserve the right to review and may revise the terms and conditions of the said agreement including price of GAS after expiry of fixed price period. The accused persons shall consider the request for extension of period of Contract subject to the availability of GAS and may offer fresh terms and conditions for such extended contract.

(b) The floor price of CBM GAS, from the date of start of supply shall be Rs 15.58 per SCM. This said price is excluding Sales Tax/VAT as per applicable rates, which will be charged in addition to above price.

(c) The said price was valid till May 11, 2012, (i.e. one year only) start of supply and after fixed period increment of floor price shall be finalized at least forty five days before the expiry of

the fixed period and in case of any disagreement beyond the above stipulated period either party may exit the contract.

(d) *The accused persons is able to supply the contracted quantity of Gas but if the complainant purchases Gas less than the contracted quantity or on account of stoppage of supply by the accused persons, then the complainant shall have to pay to the accused persons for quarterly minimum quantity (referred to as 'Minimum Guaranteed Offtake i.e. MGO") of contracted quantity."*

5) It has been alleged that the accused company was in a dominant position as at the time of entering into the agreement they had monopoly in respect of supply of CBM gas in the area where the complainant's factory was situated and they abused their position to compel the complainant company to agree to their terms which were unfair. In fact the agreement dated 11th May, 2011 was amended from time to time and lastly on 7th March, 2012 pursuant to which the accused company started raising bills for minimum guaranteed offtake and as a result of which the complainant company found it absolutely unviable to continue with the contract. Under such circumstances the complainant company by its letter dated 22nd April, 2014 requested the accused company to waive the minimum guaranteed offtake clause, however, the accused company unethically refused to withdraw the same which sparked the dispute in between the complainant company and the

accused company. The complainant company as such had no other option but to approach the Court of law and during such period the accused company illegally suspended gas supply on permanent basis from 6th July, 2014. The complainant company thereafter by a notice dated 7th July, 2014 terminated the contract with effect from 15th July, 2014. The complainant company in fact, on the basis of the agreement entered, furnished Bank Guarantee to the accused company to the tune of Rs.1,75,80,472/- and another Bank Guarantee to the tune of Rs.93,18,728/-. The accused persons referred the said dispute to Arbitration claiming minimum guaranteed offtake commencing from January 2015 till the tenure of the agreement being April 30, 2034.

6) The complainant company after the dispute arose on enquiry came to learn that:

   i) The accused company was granted Petroleum mining lease from Government of West Bengal by a Circular No.480-CI/O/Coal/016/02/MI Pt. Dated 4th September, 2008. The said lease was valid for a period of 20 years from the effective date i.e. 4th September, 2008 to 3rd September, 2028. The accused company in order to cheat the complainant company unauthorizedly modified the government circular to its own terms and published that the said license may be extended for an additional 10 years which was untrue, false and frivolous. The accused persons accordingly, entered into the mining lease agreement with the West Bengal Government and the said agreement got signed on 5th June, 2014 which is valid for a period of 20 years with effect from 4th September, 2008.

ii) The accused company with malafide intent induced the complainant company by exhibiting unauthorized publication modifying the government circular on its own terms in order to cheat the complainant company wherein it was published that the said license may be extended for an additional 10 years which is untrue, false and frivolous.

iii) The price of the gas charged by the accused persons was illegal to the extent that it was contrary to the price notified by the Government of India by its letter dated 14th February, 2008. The accused/company unjustly enriched itself by the rates charged by it and made unlawful profit by utilizing the natural resources of the country disregarding the terms and conditions of price basis/formula for valuation of CBM gas as approved by Ministry of Petroleum and Natural Gas, as is revealed from the letter dated 14th February, 2008 addressed to Sri Praveen Arora, Assistant Vice President-Legal & Company Secretary, Great Eastern Energy Corporation Limited.

iv) As per agreement entered between Government of India and the accused company, it is entitled to sell the gas as per price approved by the Government of India prior to the sale of CBM Consumers/buyers and Government of India issued price approval letter of 14th February, 2008 where sale price at the rate 6.79/MMBTU was the price fixed for CBM gas produced and sold from the gas field of the accused company. Complainant Company was unaware of the same until the recent past and as such made excess payment.

v) That in TRI Query No. DGH/RTI/72/2015-16 dated March 07, 2016 filed on behalf of the complainant company, the Director General of Hydrocarbons replied that Ministry of Petroleum and Natural Gas, vide its letter no. O-19024/1/2002-OMG(v)(pt) dated 14th February, 2008 has approved USD 6.79/MMBTU as CBM gas price for Raniganj (South Block) as such it is palpably clear that the accused persons unauthorizedly and fraudulently increased the said price of gas and thus extorted from the complainant company a huge amount.

7) The fraudulent act of the accused company came to the notice of the complainant company in course of arbitration proceedings and after extensive enquiry from where they came to learn that the accused company mis-represented the facts in the said GSPA

agreement dated 11.05.2011 and cheated the company to the tune of Rs.20,16,05,831/-, misappropriating the same thereby committing criminal breach of trust, cheating and forgery having used the said document i.e. agreement dated 11.05.2011 as genuine. The accused not being authorised by Government of West Bengal after 3rd September, 2028 increased the number of years in the GSPA agreement dated 11th May, 2011 to 10 May, 2036 which resulted in, the complainant company having sustained huge financial loss. The accused company also increased the price of CBM gas causing wrongful loss to the tune of Rs.20,16,05,831/- for the period dated 11.05.2011 to 11.07.2014.

8) The complainant company states that since July, 2014 the gas supply was disrupted by the accused persons and thereafter several litigations cropped up which are pending in various forum and as such there was delay to initiate the complaint against the accused company/accused persons. Further after exhaustive inquiry and verification the complainant company took considerable time for initiating the instant proceedings against the accused persons as they approached with a written complaint to Bowbazar Police Station on 14th March, 2019 and the police authorities till the date of filing of the complaint did not register any FIR which was intimated to the Deputy Commissioner of Police, Central Division but no action was taken.

9) The complainant company therefore prayed for taking cognizance of the offence under Sections 420/406/465/467/468/471/120B/114/34 of the Indian Penal Code.

Learned ACMM-II, Calcutta on receipt of petition of complaint by an order dated 18.04.2019 was pleased to take cognizance of the offence and transfereed the case to the Learned Metropolitan Magistrate, 9th Court, Calcutta for inquiry, trial and disposal. Learned Metropolitan Magistrate, 9th Court, Calcutta after examination of the complainant and one Ashoke Kumar Agarwal, Vice President of the complainant company was pleased to issue process by an order dated 31.05.2019 under Section 384/406/420/467/468/120B/34 of Indian Penal Code, fixing 10.07.2019 for service return and appearance. The accused company and the persons who are responsible for the business of the accused company (as described above) thereafter, challenged the continuance of the proceedings before this Court in these two revisional applications.

Mr. Debasish Roy, learned Advocate appearing for the petitioner in both the revisional applications by referring to documents downloaded from the official Website of Ministry of Corporate Affairs initially submitted that the petitioner no.3 Sushil Kumar Roongta, petitioner no.5 Sundareshan Sthanunathan and petitioner no.6 Amit Sharma in CRR 3329/2019 were not responsible for the business of the company and its affairs at the relevant period of time and joined the accused company on 15th July, 2017, 10th January, 2015 and 1st April, 2016 which are dates subsequent to the period of alleged offence as narrated in the complaint. Thus the proceedings against them should not be allowed to be continued without going into the merits of the allegations made in the petition of complaint.

Learned Advocate appearing for the petitioner/petitioners submitted that the complaint clearly states that the complainant had entered into an agreement pursuant to discussions held by and between the parties for more than a year. It was also contended that the plea/allegations taken up in the petition of complaint was also addressed before the Competition Commission of India, in case no. 63 of 2014 under Section 19(1)(a) of Competition Act, 2002 pursuant to which an investigation was made by the Director General who held the petitioners to have violated the provisions of Section 4(2)(a)(i) read with Section 4(1) of the Competition Act, 2002. The said report of the Director General was placed before the Commission and after hearing the respective parties the Commission dismissed the contention of the complainant and the aforesaid order was assailed before the Hon'ble Delhi High Court, and the Hon'ble Delhi High Court was pleased to affirm the order of Competition Commission of India. A reading of the judgment delivered by the Competition Commission of India which was affirmed by the Hon'ble Delhi High Court would reflect that the complainant was at liberty to exit from the contract after a period of one year. The dispute relating to Minimum Guaranteed Offtake according to the Hon'ble High Court was because of the fact that the complainant company entered into an agreement with ESSAR for supply of CBM Gas and thereafter raised the dispute relating to Minimum Guaranteed Offtake which is an integral part of the GSPA Agreement and it has been held by the Competition Commission of India that the accused company had the authority to insert such clause in view of the fact that once the company digs a well it has to ensure that there is a continuous supply of the same.

Petitioner contends arbitration proceedings are also pending between the parties which is admitted in the petition of complaint and the very nature of dispute would reflect that there is a breach of agreement as the point of dispute relate to minimum guaranteed offtake which was a clause available in the agreement and the price charged for purchase of CBM gas. It has been emphasized that a business transaction which continued for a considerable period of time as is admitted in the complaint and the foundation of a Civil dispute has been converted into a criminal proceedings with the purpose of harassing the company and its official who are catering the main business house. The fact that the complainant tried to portray that they had suffered loss of Rs.20 crores (approximately) because of certain terms of the agreement and the price of the CBM gas which was charged has already been adjudicated and there cannot be a case of any extortion, cheating, criminal breach of trust in the background of the fact that for a period of about 3 years the business relationship continued between the parties and it was only after the business of the complainant company shrinked they picked up frivolous issue for nailing down petitioner/accused company and its official.

Mr. Sekhar Basu, learned Senior Advocate appearing for the complainant company/opposite party submitted that the petitioner/petitioners approached this Court at a very initial stage, immediately after summons were issued against them and any interference at this stage would debar the complainant from adducing its evidence before the Court of Law. Elaborating on such issue it was submitted that the present case would follow the procedure of a warrant case instituted otherwise than on a police report and a pre-charge evidence is to be recorded under Section 244 of the Code of Criminal Procedure for prima facie establishing a case against the accused persons. Any interference at this stage, therefore, would take away the right of the complainant, to this effect learned Advocate relied upon paragraph 5, 6 and 9 of Kamal Shivaji Pokarnekar –Vs. – State of Maharashtra reported in (2019) 14 SCC 350 which are set out as follows:

> ***"5.*** *Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] .*

> ***6.*** *Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not [Indian Oil Corpn. v. NEPC (India) Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] .*
>
> ***9.*** *Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the trial court issuing summons to the respondents. A perusal of the complaint discloses prima facie, offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process it is not open to the courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.***”**

Relying upon State of Karnataka –Vs. – M. Devendrappa reported in (2002) 3 SCC 89 it was submitted that the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure is exception in nature and not the rule, as such one should bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made and a case where there is legal evidence which on appreciation may or may not support the accusation. By referring to a relevant part of the referred judgment the opposite party contended that Section 482 of the Code of Criminal Procedure was never intended to be an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. Learned Senior Advocate also referred to the celebrated judgment of the Hon'ble Supreme Court in State of Haryana –Vs. Bhajan Lal reported in 1992 Supp (1) SCC 335 and submitted that the present case do not fall within the seven categories referred to in paragraph 102 of the said judgment. The complainant/opposite party further contended that the petition of complaint, the initial deposition of Rajib Ghosh and Ashoke Kumar Agarwal and the documents taken as a whole make out triable offence and the learned Magistrate after prima facie being satisfied was pleased to issue process against the accused persons. By referring to the provisions of Section 415 of the Indian Penal Code it was submitted that dishonest concealment of facts amounts to the offence of cheating and the explanation to Section 415 of the Indian Penal Code provides that "A dishonest concealment of facts is a deception within the meaning of this section." By referring to Section 24 of the Indian Penal Code learned Senior Advocate submitted that the word 'dishonestly' is defined in the Indian Penal Code as "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". It was contended by referring to the above definition of the Indian Penal Code that the accused company and its Directors/employees induced the complainant company to enter into the Gas sale and Purchase

Agreement dated 11.05.2011 for a period of 25 years, meaning thereby that such agreement would be valid till April, 2034. The complainant company relying upon such representation shifted from its traditional furnace fuel to CBM gas and the accused company having monopoly in the supply of CBM gas adopted unfair means. It later transpired to the complainant company that the accused company did not have the authority to enter into an agreement for a period of 25 years and in its prospectus falsely claimed and published that the mining lease granted by the Government of West Bengal can be extended for a further period of 10 years. Such claim is contrary to the license granted by the Government of West Bengal and concealing such facts the accused company had the intention of wrongful gain by entering into an agreement with the complainant company for a period of 25 years. The complainant opposite party by referring different clauses of the GSPA Agreement and other documents claimed that by concealing relevant facts the accused company entered into the agreement dated 11.05.2011 and committed wrongful loss to the complainant company and as such the decision of the Hon'ble Supreme Court in the case of Iridium India Telecom Ltd. –Vs. – Motorola Inc. Reported in (2011) 1 SCC 74 is relevant for proper appreciation of the present case as has been held by the Hon'ble Supreme Court *"the complaint in its entirety will have to be examined on the basis of the allegations made therein. But the High Court has no authority or jurisdiction to go into the matter or examine its correctness. The allegations in the complaint will have to be accepted on the face of it and the truth or falsity cannot be entered into by the Court at this stage."* The aforesaid judgment was also relied upon by this High Court in Sushil Mohata & Ors. –Vs. – The State of West Bengal & Anr. reported in 2014 SCC OnLine Cal 17385.

The complainant opposite party further submitted that the price of gas charged by the accused company was much higher than the price notified by the Government of India and by entering into the Gas Sale and Purchase Agreement the accused company made excess billing which resulted in wrongful loss to the complainant company. Learned Senior Advocate by referring to the relevant part of the complaint tried to draw the attention of this Court and submitted that the excess price charged also caused a wrongful loss to the complainant company to the tune of Rs.20,16,05,831/-. By referring to Rajesh Bajaj –Vs. – State of NCT of Delhi reported in (1999) 3 SCC 259 it was submitted that a cause of cheating has been made out and the contentions advanced by the accused company at this stage cannot be considered. The complainant/opposite party also relied upon the judgment of this Hon'ble Court in Sri Aurobinda Seva Kendra & Ors. –Vs. – State of West Bengal & Anr. reported in 2017 SCC OnLine Cal 9198 wherein it was held that the allegations against the Hospital Authority for raising inflated bills for medicines claiming to have been administered for treatment and unused medicines, if any, not returned to the complainant constitutes an offence under Section 406/420 of the Indian Penal Code. The further contention which was advanced by the complainant opposite party is that the order dated 16.02.2017 passed by the Competition Commission of India do not have any relevance in view of the fact that it is a settled proposition of law that merely because a Civil claim is maintainable it does not mean that a Criminal complaint cannot be maintained. Reliance was made on Amit Kapoor –Vs. _ Ramesh Chander reported in (2012) 9 SCC 460.

Additionally it was contended that it is also a settled proposition of law that if the allegations give rise to a civil claim and also amounts to an offence under the Criminal Law, merely because a civil claim is maintainable do not mean that a criminal complaint cannot be maintained. Attention of the Court was drawn to Indian Oil Corporation –Vs. – NEPC India Ltd. & Ors. reported in (2006) 6 SCC 736, Paragraph 12(v) is relevant which is as follows:

> ***12.*** *(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*”

Mr. Debasish Roy, learned Advocate replying to the relevant judgment cited on behalf of the complainant/opposite party submitted that in Iridium India Telecom Ltd. (supra) the specific allegation was that the complainant company was induced to part with a sum of Rs.126 crores for the purpose of setting up a gateway when it was within the knowledge of the accused company that no such gateway was necessary and that the necessity for installation of a gateway was a complete fraud which was dishonestly created to get a license to operate the system in it. Such information was withheld by the accused company from the complainant company and as such the same amounted to cheating. In the instant case according to him the agreement with the Government of India dated 31st May, 2011 and from the agreement with the State of West Bengal dated 5th June, 2014, it would clearly transpire that the petitioner company had the lease for a period of 25 years with the option of extension for another 5 years.

Distinguishing the judgment of the High Court, Calcutta in Sri Aurobinda Seva Kendra & Ors. (supra) learned Advocate submitted that the facts in the said case relate to a nursing home authority raising a bill of Rs.2,08,424/- which were the cost of the medicines used for the treatment of the wife of the complainant/opposite party no.2 which were reflected in the cash memo and the vouchers. However, from the treatment-sheet supplied by the Nursing Home Authority it was found that the list of medicines administered to the patient were around Rs.1,09,800/- and as such the hospital authority realised excess sum of Rs.98,624/- as costs of medicines. Neither the unused medicines were returned to the complainant nor any amount was refunded. As such it was held that a prima facie case of cheating was made out against the accused persons. Referring to the cited decision of the Hon'ble Supreme Court in State of Karnataka –Vs.– M. Devendrapa & Anr.

(supra) and also State of M.P. –Vs. – Awadh Kishore Gupta Ors. reported in (2004) 1 SCC 691 it was emphasised that the cases relate to police investigation wherein the exercise of inherent powers of the High Court were discussed. Replying to the decision as relied upon by the complainant/opposite party in respect of Kamal Shivaji Pokernekar –Vs. State of Maharashtra & Ors. reported in (2019) 14 SCC 350 it was submitted that the petitioners never contended that the dispute referred above is civil in nature and as such the proceeding should be automatically quashed. It was submitted that the nature of dispute in the instant case arises out of a purely commercial dispute and there is no ingredient of culpability involved as alleged by the complainant. Distinguishing the judgment of the Hon'ble Supreme Court in Rajesh Bajaj (supra) it was submitted that the said case was based on First Information Report and the interference was done by the Hon'ble Apex Court as the said FIR was quashed at the stage of investigation. Lastly, it was submitted that as the ingredients of the offence are lacking in the petition of complaint the initial deposition of the two witnesses as well as the documents relied upon by the complainant the proceedings relating to C. Case No. CNS/124/2019 pending before the learned Metropolitan Magistrate, 9th Court, Calcutta should be quashed.

The dispute between the complainant company and the accused company arise out of an agreement which commenced on or about May, 2011 and was suspended/terminated on or about July, 2014. During this period the supply of CBM Gas continued and the parties exchanged their communications relating to the supply and the transactions. The grievance of the complainant company as is revealed from the complaint was that the accused company had a monopoly in the supply of CBM Gas in the area where the complainant company's factory were situated and the accused company abused its dominant position to agree to the terms which according to the complainant company was unfair. The clause relating to Minimum Guaranteed Offtake which was introduced by the accused company, hurt the business of the complainant company as they found that on this term to carry on the business was becoming unviable. The complainant company as is reflected in the complaint by its order dated 2nd April, 2014 requested the accused company to waive the MGO clause, it has been alleged that initially the accused company accepted such proposal subject to the increase in the price of the gas but later unethically refused to withdraw the MGO Clause which sparked a dispute between them. It is also alleged that the dispute and differences arose with this particular clause to such an extent that the complainant company had to approach Court of law, and during such pendency of proceedings the accused company suspended the supply of gas on permanent basis on and from 6th July, 2014. Consequently the complainant company by its notice dated 7th July, 2014 terminated the contract with effect from 15th July, 2014. The other allegations which have been made in the petition of complaint so filed is that because of the unfair terms in the agreement the complainant company had to furnish the initial Bank Guarantee of Rs.1,75,80,472/- and subsequently another Bank Guarantee to the tune of Rs.93,18,728/-. Additionally it has also been alleged regarding the pricing which has been charged by the accused company which was beyond the scope of the price fixed by the Government of India. The complainant company has also challenged the tenure/period for which the accused company compelled the complainant company to enter into the agreement or the lease which was beyond the period of lease granted by the Government to the accused company. Finally the complainant company alleged that because of the GSPA agreement and the terms incorporated therein which was with an evil motive and full of misrepresentations, the complainant company suffered to the tune of Rs.20,16,05,831/-.

The nature of allegations made in the petition of complaint are exclusively on the foundation of the GSPA agreement, the terms and clause incorporated therein. The grievance of the complainant relate to Minimum Guaranteed Offtake which is one of the terms incorporated in the GSPA agreement. The pricing of the gas, the Bank Guarantee which was furnished and the expectation of the complainant that because of such incorporation of clause and pricing, the loss has been incurred which have been claimed to be an amount of Rs.20,16,05,831/-.

The present is not a dispute that an agreement was entered into for supply of gas and the accused company after entering into all formalities relating to the agreement and payment, did not supply any gas or for failure of commitment as is revealed from the complaint. Even if the allegations made in the petition of complaint and the initial evidence under Section 200 of the Code of Criminal Procedure are taken to be correct what is more glaring in the petition of complaint is the negotiations relating to the terms and clause incorporated in the agreement. A business house has the authority to decide its terms and clause on which it would carry on its business. The pricing charged if it was excess and any contravention of any rule, the same should have been brought to the notice of the statutory authorities responsible for fixing such price and the same cannot be a subsequent plea of a party to an agreement after carrying on business for more than three years. So far as the allegations to the tenure or period of the agreement is concerned the time period has not reached for the accused to allege and if the Minimum Guaranteed Offtake had an impact on the tenure of the agreement in that case the pricing negotiations cannot be a subject matter of adjudication by a criminal Court, when the parties had the option to exit from the contract.

The Hon'ble Supreme Court in Pepsi Foods Ltd. –Vs. – Special Judicial Magistrate reported in (1998) 5 SCC 749 has observed that:

> ***"28.*** *Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is*

> *not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.***"**

The said principle was reiterated by the Hon'ble Supreme Court in Ravindranatha Bajpe –Vs. – Mangalore Special Economic Zone Ltd. & Ors. reported in 2021 SCC OnLine SC 806.

Taking into account the overall allegations made in the petition of complaint and the initial evidence under Section 200 of the Code of Criminal Procedure, I am of the view that no offence has been made out under Section 384/406/420/467/468/120B/34 of the Indian Penal Code and the issuance of process by the Learned Magistrate by its order dated 31.05.2019 as such calls for interference.

In view of the aforesaid observations, that the petition of complaint read along with the initial evidence under Section 200 of the Code of Criminal Procedure of the complainant and its witness, fails to make out any offence, all further proceedings of C. Case No. CNS/124/2019 pending before the Learned Metropolitan Magistrate, 9th Court, Kolkata as also the orders passed therein are hereby quashed.

Accordingly, CRR 1408 of 2019 along with CRR 3329 of 2019 are allowed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby made absolute.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)